Supreme Court, U.S.
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IN THE
SUPREME COURT OF THE UNITED STATES

Alton Ray Mills and
Stephen D. Toarmina,

Petitioners,

v.

United States of America,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the Government must prove beyond a reasonable doubt that the defendant's actions produced an adverse, substantial effect on commerce, or whether any effect on commerce at all will suffice to confer federal jurisdiction under the Hobbs Act?

2. Whether the application of the Hobbs Act to a defendant, whose actions were purely local in nature and effect, is outside of federal jurisdiction, and therefore, unconstitutional?

PARTIES TO THE PROCEEDINGS

Petitioners

Alton Ray Mills and Stephen D. Toarmina. Petitioners are individuals and have no corporate affiliations.

Respondent

The United States of America.

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Petitioners respectfully petition for a writ of certiorari to review the judgment of the Sixth Circuit Court of Appeals in this case.

OPINIONS BELOW

The Sixth Circuit opinion (App. A) is reported at *U.S. v. Mills*, 204 F. 3d 669 (6th Cir. 2000). The opinion of the United States District Court, Western District of Tennessee (App. B) is unreported.

STATEMENT OF JURISDICTION

The judgment of the Sixth Circuit Court of Appeals was entered February 28, 2000. The Court of Appeals entered an order denying a timely petition for rehearing and petition for rehearing *en banc* on May 5, 2000. App. C.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involved Article 1, Section 8 of the United States Constitution. App. E. Article One, Section 8 of the Constitution states, in pertinent part, as follows:

> "The Congress shall have the Power . . . [3] To regulate Commerce with foreign nations, and among the several States . . ."

The full Text of 18 U.S.C. §1951 (Hobbs Act) is located at App. F. The key provision of the Hobbs Act is the federal jurisdiction requirement, which states:

"Whoever, in any way or degree, obstructs, delays or affects commerce . . . by robbery or extortion. . ."

STATEMENT OF THE CASE

A. INTRODUCTION

This case involves the federal prosecution of the Petitioners, Alton Ray Mills and Stephen D. Toarmina, for Hobbs Act violations. The indictment alleged that the Petitioners engaged in extortionate activity, which interfered with, burdened, obstructed, delayed, or otherwise affected commerce. The government alleged that Petitioner Toarmina requested money from private individuals in return for helping them secure employment with the Shelby County Sheriff's Department (SCSD). The only ties to interstate commerce alleged by the government were the loans obtained by the individual, private victims, and in one count only involving Petitioner Mills, a check written on a business account.

B. FACTS

The government, at trial, introduced evidence that between February 1991 and January 1995, the Petitioners engaged in a scheme to solicit individual payments of approximately $3,500 cash from persons who were seeking employment with the SCSD in Memphis, Tennessee. Petitioner Mills, at the time, was the Chief Deputy for the SCSD. As Chief Deputy, his duties included the hiring of new deputies, subject to approval by the Sheriff. Petitioner Toarmina held the title of 'Special Staff Deputy' for the

SCSD, although that titled conferred no official duties or authority.

The indictment alleged that during the relevant time period, Petitioner Toarmina solicited payments from several prospective deputies. Essentially, these men were told that in exchange for the payments, the 'man downtown' (allegedly Petitioner Mills) would ensure their employment as deputies. Six of the applicants who made the payments were subsequently hired by the SCSD.

The indictment further alleged that, as part of the conspiracy, Petitioner Toarmina directed or assisted several of these prospective deputies in securing financing from a local lending institution which was owned and operated by Petitioner Toarmina's friend. It was alleged that this financing was specifically for the purpose of securing the money to make the payments. The indictment alleged that federal jurisdiction requirements were met when the men who obtained the loans from the local lending institution not only were directed to that institution by Petitioner Toarmina or one of his co-conspirators, but also when those men purchased insurance to cover the amount of the loan in the event of death or disability. The payments for that insurance were ultimately made to a Florida company.

Although five of the six men who went to the local lending institution did in fact use it to obtain a personal loans, one of the prospective deputies chose instead to obtain the financing from his personal credit cards.

Of those who chose to obtain loans from the local lending institution, each had the personal choice as to whether or not to purchase the death or disability insurance. Further, Petitioner Toarmina himself had utilized the services of the

lending institution in the past and had loans outstanding at the time of the trial. When Petitioner Toarmina applied for and received his loans, he went through the same procedures as all of the prospective deputies.

Finally, evidence was presented at trial that a portion of the payments made to Petitioner Toarmina was in fact a re-payment of loans owed to him by one of the prospective deputies. Additionally, some of the prospective deputies learned of the potential for obtaining loans from the local lending institution through one or more of the other prospective deputies. Finally, at trial it was revealed that none of the prospective deputes were required to obtain loans from the local lending institution.

C. SUMMARY OF THE COURSE OF PROCEEDINGS

The case was brought in the United States District Court, Western District of Tennessee. A jury verdict was returned against the defendants. However, the District Court found that the prosecution had not shown the requisite nexus with interstate commerce. Judge Jerome Turner commented that he did not see how Petitioner Toarmina's direction of the prospective deputies to a local lending institution changed the character of a loan, which would otherwise not have been sufficient to confer federal jurisdiction in to a loan, which conferred federal jurisdiction. *See*, App. B, p. 14a. Therefore, he granted the Defendants' Motion for Judgment of Acquittal on all but the one count only involving Petitioner Mills, citing lack of federal jurisdiction.

The government appealed to the Sixth Circuit, and the Sixth Circuit reversed. The Sixth Circuit held that because either Petitioner Toarmina or one of his co-conspirators had actual knowledge that the men involved would likely make the

payments from loans obtained in interstate commerce (through banks or credit cards), that this knowledge alone was sufficient to transform the alleged extortion into a federal crime. *U.S. v. Mills*, 204 F. 3d 669, 673 (6th Cir. 2000). Distinguishing this case from one in the Seventh Circuit, the Sixth Circuit found that borrowing a portion of the payment was a sufficient nexus with interstate commerce to confer federal jurisdiction. *Mills* at 672. Finally, the Sixth Circuit recognized that the loans themselves could not be characterized to have adversely affected interstate commerce, but held that under the Hobbs Act even a beneficial effect on interstate commerce is sufficient to grant federal jurisdiction over a defendant. *Id.* at 673.

REASONS FOR GRANTING THE WRIT

A. THE DECISION OF THE COURT OF APPEALS CONFLICTS WITH DECISIONS OF OTHER COURTS OF APPEALS

There are currently four potential interpretations of the Hobbs Act. The Circuits are split not only as to what the requisite character (adverse/beneficial) of the effect on interstate commerce the government must prove, but also the Circuits are in conflict on the degree (*de minimus*/substantial) of effect the Government must prove. This confusion prevents the equitable application of the Hobbs Act across the several Circuits. That is, there is no guarantee that a defendant in one Circuit will receive the same treatment as a defendant in another Circuit. This difference in treatment under a federal law is inherently unconstitutional, and it is often the duty of the Supreme Court in cases such as this to define the appropriate standard for application of the statute

at issue. *Braxton v. U.S.*, 500 U.S. 344, 347-348 (1991). In determining and defining the proper application of the Hobbs Act jurisdictional requirement, this Court will ensure that the true, constitutional purposes of the Hobbs Act, as originally passed, will be fulfilled.

1. THE CHARACTER OF THE REQUISITE EFFECT ON COMMERCE

The Circuits are divided as to whether or not the Hobbs Act requires the government to prove an adverse effect on commerce or whether any effect on commerce is sufficient to grant federal jurisdiction over a defendant. The Second, Fifth, and Eighth Circuits require that the government prove that the alleged actions of the Defendant had an adverse effect on interstate commerce. *See*, *Jund v. Town of Hempstead*, 942 F. 2d 1271 (2nd Cir. 1992); *U.S. v. Collins*, 40 F. 3d 95 (5th Cir. 1994); and *U.S. v. Harmon*, 194 F. 3d 898 (8th Cir. 1999). In *U.S. v. Collins*, the Fifth Circuit discussed the two types of Hobbs Act violations the federal government may pursue. *Collins*, 40 F. 3d at 99. The first requires that the alleged actions of the defendant result in a direct effect on interstate commerce. *Id.* (i.e. robbery of an eighteen wheeler engaged in interstate commerce). Alternatively, the government may proceed by showing an indirect effect on interstate commerce, commonly known as the "depletion of assets theory." *Id.* The depletion of assets theory, the Court noted, is commonly used in extortion cases where the extortionate transaction involves the depletion of a business' assists thorough the use of the business' assets to pay the extorted money, rather than its use to buy goods in interstate commerce. The Fifth Circuit found that under the depletion of assets theory the government is required to prove a minimal adverse effect on interstate commerce. *Collins* at 95. In *U.S. v. Harmon*, the Eighth Circuit recently found that to

prove a Hobbs Act extortion violation the government must prove that the alleged actions of the defendant in an "extortionate transaction delayed, interrupted or adversely affected interstate commerce." *Harmon*, 194 F. 3d at 893. (emphasis added). Further, in *Jund*, the Second Circuit found that the government must show at least some slight or subtle interference with interstate commerce to satisfy the commerce-based jurisdictional requirement under the extortion prong of the Hobbs Act. *Jund*, 942 F. 2d at 1285

The findings of the Second, Fifth, and Eighth Circuits are supported by the legislative history of the Hobbs Act. The Hobbs Act was passed by a Congress seeking to end harassment and violence against farmers and others who sought to take their goods across state lines to sell at market. 91 CONG. REC. 11900 (Summers) (1945). For example, before the Hobbs Act was passed, farmers were often stopped and forced to pay a particular sum per truckload to pass through blockades and proceed to market. *Id.* Congress was outraged to find that the original 1934 Antiracketeering Act did not, according to the Supreme Court, cover this type of action in federal court. *Id.* at 11903 (Gwynne); 91 CONG. REC. A 3800. Thus, Congressman Hobbs and others set out to draft and pass an act that would federalize these crimes. Throughout the debates on the passage of this bill in 1945, those in favor of the legislation reiterated that the purpose of the act was to prevent persons from using robbery and extortion in a manner which served to interfere with interstate commerce. *Id.* at 11907 (Fellows); S. Rep. No 1516, 79th Cong., 2nd Sess. (1946) ("The purpose of this bill is to prevent interference with interstate commerce by robbery or extortion, as defined in the bill"). The proponents were also adamant that the bill could be passed under Article One, Section Eight, in that it was a bill designed to protect interstate Commerce. 91 CONG. REC. 11904 (Gwynne)

(1945); *Id.* at 11912 (Hobbs)[1]; *Id.* at 11905 (Caller); *Id.* at 11907 (Fellows); *Id* at 11911 (Jennings). The words interfere and protect are emphasized because they show the true intent of Congress in passing the Hobbs Act. Specifically, those who drafted and passed the Hobbs Act saw it as a protection of interstate commerce by keeping interstate commerce free from interference. *Id* at 11900 (Summers) ("This bill is to prevent . . . people from making use of robbery and extortion . . . in obstruction of interstate commerce. That is all it does.").

To construe the purpose and extent of federal legislation, it is important to consider as precisely as possible the intent of Congress in passing the law. *U.S. v. American Trucking Ass'n*, 310 U.S. 534, 542 (1940). While it is often the first rule of construction to read the plain meaning of a statute, "[t]here is no invariable rule for the discovery of [Congress' intent]" *Id.* Whenever a plain meaning reading of a statute leads to an unreasonable result, which was clearly outside the intent or policy enunciated by Congress in enacting that statute, the Supreme Court has followed the intent of Congress rather than the literal words of the statute. *Id.* at 543. "When aid to construction of the meaning of words, as used in the statute, is available, there certainly can be 'no rule of law' which forbids its use, however clear the words may appear on 'superficial examination.'" *Id.* at 543-544 (internal citations omitted). In the instant matter the congressional record is replete with statements of the purpose of Congress in passing the Hobbs Act. That is, Congress

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[1] "I want to make it perfectly clear that the sole and simple purpose, the single purpose, of this bill is to do the best we can to protect interstate commerce and free the highways and streets of this country of robbers."

intended the Hobbs Act to protect interstate commerce by preventing interference with interstate commerce. Whenever the intent of Congress may be ascertained, that intent must be given the utmost weight in analyzing the meaning of the words used in the statute. Therefore, when a proper analysis of the Hobbs Act is applied, and due deference is given to the intent of Congress, it becomes clear that the prosecution of the Petitioners for local activities which may have benefitted interstate commerce did not fall within the ambit of the Hobbs Act as passed by Congress.

2. THE DEGREE OF EFFECT ON COMMERCE REQUIRED UNDER THE HOBBS ACT

Another manner in which the Circuits are divided is in the determination of the degree of violation required by the Hobbs Act. Specifically, following the recent Supreme Court holding in *Lopez*, *infra*, some Circuits have held that the proper standard is a substantial effect on interstate commerce. *See*, *U.S. v. Jennings*, 195 F. 3d 795 (5th Cir. 1999)[2]; *U.S. v. Quigley*, 53 F. 3d 901, 910 (8th Cir. 1995) ("because of federalism Congress only has the power to regulate conduct that 'exerts a substantial effect on interstate commerce'"). Others, however, have maintained that only a *de minimus* effect on commerce need be shown to satisfy the commerce-based jurisdictional requirement of the Hobbs Act. *See*, *U.S. v. Buffey*, 899 F. 2d 1402 (4th Cir. 1990) ("the nexus [to

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[2] In "Hobbs Act prosecutions based on local activities that affect interstate commerce, the government need not prove that the effect of an individual defendant's conduct was substantial. It suffices to show a slight effect in each case, provided that the defendant's conduct is of a type which, viewed in the aggregate, affects interstate commerce substantially." *Jennings*, 195 F.3d at 800.

interstate commerce] may be *de minimus*"); *U.S. v. Shareef*, 190 F. 3d 71, 75 (2nd Cir. 1999) (although a Hobbs Act conviction cannot be sustained if the government failed to prove that commerce was affected "it is well established that the burden of proving such a nexus is '*de minimus*'") (internal citations omitted); *U.S. v. Atchetson*, 94 F. 3d 1237 (9th Cir. 1996) (the government need prove only that the defendant's actions had a *de minimus* effect on interstate commerce to support a Hobbs Act violation); and *U.S. v. Wiseman*, 172 F. 3d 1196 (10th Cir. 1999) ("only a *de minimus* effect need be proven").

Within the *de minimus* constructions there are differing applications of the standard. For example, in the Fourth Circuit, a reasonable probability of a *de minimus* effect on commerce must be present at the time of the extortion. *Buffey* at 1404 (holding that the Hobbs Act did not apply in a case where the extortion resulted in the depletion of an individuals personal assets). In the Second, Seventh, Ninth and Tenth Circuits only a slight, subtle or even potential *de minimus* effect on interstate commerce is required to be proven by the government. *See, Shareef*, 190 F 3d. at 75; *Matteson*, 671 F 2d at 1025; *Atchetson*, 94 F. 3d at 1241; and *Wiseman*, 172 F. 3d at 1214.

Similarly, in the Circuits adopting a version of the *Lopez* substantial effects test, there have been two different applications. In the Eighth Circuit, a potential aggregate effect on interstate commerce is all that is required in cases involving the depletion of assets theory, so long as the government can prove that the probability of an aggregate effect on interstate commerce is real rather that speculative. *Quigley*, 53 F.3d at 910. The Fifth Circuit, on the other hand, has truly embraced the aggregation principle under *Lopez*. In *Collins*, the Fifth Circuit enunciated that

congressional power only extended to activities which had a substantial effect on interstate commerce. *Collins*, 40 F. 3d at 100-101. This was clarified further in *U.S. v. Jennings*, where the Fifth Circuit held that unless the alleged act, if taken in aggregate across the nation would have an effect on interstate commerce, no federal jurisdiction is available. *Jennings,* 195 F 3d. at 800. That is, if the alleged actions of the defendant, standing alone, do not effect interstate commerce, then there is no basis for federal jurisdiction under the Hobbs Act.

When examining the legislative history of the Hobbs Act, it is clear that the interpretation applied by the Fifth Circuit most closely fits Congress' original intentions. The appropriate division of power between state and federal governments was discussed during the 1945 debates on the Hobbs Act. There was concern that the Hobbs Act would interfere with the states' rights. Congress, in the end, was clear on its understanding of what would confer federal jurisdiction, as shown in the following exchange:

> MR. GRANGER. It would not affect a farmer who picked up produce within his own state and delivered it within his own state? That would be intrastate commerce?
>
> MR. SPRINGER. Yes.
>
> MR GRANGER. What is interstate commerce? Is a farmer who crosses the State line with his own property engaged in interstate commerce?

MR. SPRINGER. There in no doubt that he is engaged in interstate commerce when he crosses the state line.

MR. ROBINSON of Kentucky. A transaction within a State may be interstate commerce if it oppresses and interrupts seriously or in a substantial way goods moving from one State to another?

MR. SPRINGER. The gentleman is entirely correct. That has been defined by judicial decision.

91 CONG. REC. 11910 (1945).

Clearly, Congress was intending that the Hobbs Act be interpreted to apply to actions involving only substantial effects on interstate commerce through the aggregation principle as enunciated in *Wickerd v. Filburn*, 317 US 11 (1942).[3] Their intention, in this respect, was consistent with respecting states' rights. As stated by Congressman Summers, "I am not opposed to States rights; but I am not willing to go so far in supporting States rights that gangsters

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[3] It is interesting to note that recently this Court has affirmed the use of *Wickard* only for matters which are strictly commercial in nature. *U.S. v. Morrison*, 120 S.Ct. 1740, 1750 (2000) (FN. 4). The instant matter, being criminal in nature, therefore, does not lend itself to the application *Wickard* aggregation principle. This serves to point out more clearly the level of confusion in the various Circuits as to the correct application of the Hobbs Act jurisdictional requirement, and is a further reason that this Court should grant the writ and give direction in this confused area of law.

of one State may rob citizens of another State engaged in interstate commerce." *Id.*

3. THE COURT MUST DEFINE STRICT TERMS FOR THE APPLICATION OF HOBBS ACT JURISDICTION

Among the several Circuits, the courts definitions of degree and character of effect on interstate commerce required by the Hobbs Act is scattered. Currently, there is no possible way that this federal criminal law can be applied equally to all citizens of the United States, because among the Circuits there is no uniformity in applying the commerce-based jurisdictional requirements. It is a long standing principle that when there is ambiguity concerning the application of a federal criminal statute that statutes should be interpreted with leniency. *U.S. v. Bass*, 404 U.S. 336, 347 (1971). Further, all federal statutes should be interpreted within the framework of not changing the federal-state balance, unless Congress explicitly states otherwise. *Rewis v. U.S.*, 401 U.S. 308, 812 (1971); *Bass* at 349. Using these principles of statutory construction, only one interpretation of the Hobbs Act jurisdictional requirement remains constitutional.

First, the application of the *Bass* and *Rewis* statutory construction principles to the instant case indicate that the Court should define the requisite character of the effect on interstate commerce to be adverse. That finding is not only in accordance with the principle of leniency, *Bass* at 349; *Rewis* at 812, but also with the long-standing principle of not altering the federal-state balance. *Id.* An adverse effect would require the federal government to meet a higher burden before gaining jurisdiction over a defendant, thus meeting the principle of leniency. Further, reflecting the traditional

notions of the federal-state balance of power and the states traditional sovereignty over crimes committed within their borders, the requirement that the effect on commerce be adverse before federal jurisdiction is conferred serves to maintain the traditional federal state balance. Moreover, such a finding follows the original purpose of Congress in passing the Hobbs Act. *See*, S. Rept. No. 1516 (1946).

Second, the application of these statutory construction principles to the required degree of effect on interstate commerce indicates that the requirement should be a substantial effect on interstate commerce to confer federal jurisdiction. This is consistent not only with the principle of leniency in the presence of statutory ambiguity, but also the principle of maintaining a consistent federal-state balance. That is, requiring the federal government to prove a substantial effect on interstate commerce not only leaves them with a higher burden in accord with the principle of leniency; but this higher burden also ensures that traditional notions of the balance of power between state and federal governments survives. Thus, the Hobbs Act should be read to confer federal jurisdiction only in cases where the government can prove a substantial adverse effect on interstate commerce. *Bass* at 349; *Rewis* at 812. This reading of the Hobbs Act under the federal-state balance principle and the principle of leniency in the presence of ambiguity, is also in accord with the original intention of Congress. *See,* 91 CONG. REC. 11900.

By finding that the proper interpretation of the Hobbs Act requires an adverse, substantial effect on interstate commerce this Court serves not only to fulfill traditional notions of federalism and statutory construction, but also serves its function in determining the constitutional interpretation of federal laws. *See, Marbury v. Madison,*

infra. The Court, by defining the proper way to gain federal jurisdiction over a defendant under the Hobbs Act, gives invaluable aid to the lower trial courts, and helps to ensure that the Hobbs Act is applied equally to all citizens.

Under this construction, the original holding of the District Court should be reinstated. The Petitioners in this case did not cause any action that interfered with or which in any way or degree had an adverse effect on interstate commerce. Further the Petitioners actions, even if they were found to have an effect on interstate commerce, do not rise to the level of a substantial effect. Therefore, because an appropriate interpretation of the Hobbs Act leads to an adverse, substantial effects requirement, and because the alleged actions of the Petitioners failed to satisfy this requirement, the original District Court holding should be reinstated.

B. THE QUESTIONS PRESENTED ARE IMPORTANT

In recent years this Court has handed down several decisions which serve to refine the definition of Congress' power to legislate under the guise of the commerce clause. *See, U.S. v. Lopez*, 514 U.S. 549 (1995); *U. S. v. Morrison*, 120 S. Ct. 1740 (2000); *Jones v. U.S.*, 120 S. Ct. 1904 (2000). Through this endeavor, a clearer analysis has emerged to aid in determining whether a statute passed under Congress' commerce-based jurisdiction is constitutional. This analysis is also useful in determining whether a statute's application in a given case is constitutional. *See generally, Jones*, 120 S. Ct. 1904. It is this use of the analysis which the Petitioners seek to employ in this case. The Petitioners are not challenging the constitutionality of the Hobbs Act, rather, the Petitioners seek only to challenge the

constitutionality of the statute as it was applied to the Petitioners.

The analysis enunciated in *Lopez* and applied in *Morrison* has four prongs. *Lopez,* 514 U.S. at 565-561; *Morrison*, 120 S. Ct at 1751-1753. They are: (1) whether the legislation purports to regulate an economic activity, *Lopez* at 561, *Morrison* at 1751; (2) whether the legislation has an express commerce based jurisdictional requirement, *Lopez* at 561, *Morrison* at 1752; (3) whether the legislative history supports the purpose (application) of the statute, *Lopez* at 562, *Morrison* at 1752; and (4) whether the statute, as written or applied, leads to a but-for analysis of Congress' commerce-based legislative powers, *Lopez* 564, *Morrison* 1753. In the instant matter the Hobbs Act is a statute with an express commerce-based jurisdictional requirement. However, the Hobbs Act is criminal, not economic in nature, and its application in the instant case is not only far outside the legislative history of the Act, but also leads directly into a but-for, slippery-slope causational application of Congress' commerce-based legislative powers.

1. THE HOBBS ACT LEGISLATES CRIMINAL ACTIVITY

The Hobbs Act, like the acts at issue in *Lopez* and *Morrison*, is a criminal statute. *Lopez* at 561; *Morrison* at 1751. The regulation and definition of criminal acts is one that has traditionally be left to the states. *Lopez* at 564; *Bass*, 404 U.S. at 349. However, Congress may, under its several powers, enact a statute, which regulates crime in federal matters. One of the federal powers used by Congress to enact criminal statutes is the regulation of interstate commerce. When a statute is passed under the guise of the commerce clause, but that statute touches on an area other than

commerce, that statute should be closely examined to determine whether or not its enactment or application is constitutional. *Morrison* at 1750. Because the Hobbs Act is a criminal statute enacted under the guise of Congress' commerce-based legislative power, the enactment and application of that statute must be closely examined.

2. THE HOBBS ACT HAS AN EXPRESS COMMERCE-BASED JURISDICTIONAL ELEMENT

Unlike the statutes at issue in *Lopez* and *Morrison*, the Hobbs Act does have an express commerce-based jurisdictional element. However, as in *Jones*, it is the application of the commerce-based jurisdiction requirement, which the Petitioners seek to have reviewed. *Jones*, 120 S. Ct. at 1910. *See also*, *U.S. v. Bass*, 404 U.S. 336 (1971); *U.S. v. Culbert*, 435 U.S. 371 (1978).

The Hobbs Act provides in pertinent part that "[w]hoever, in any way or degree, obstructs, delays or affects commerce . . . by robbery or extortion . . ." shall be subject to trial and punishment in the federal courts. 18 U.S.C. §1951(a). This Court has routinely accepted that with the words 'affects commerce', Congress shows its intent to use its full power under the commerce clause. *Jones* at 1909. The fact that Congress in 1945-6 intended to use its full power under the commerce clause is not disputed by the Petitioners. What the Petitioners dispute is the subsequent manipulation that, under the guise of full commerce clause power, the federal government adopted in its application of the statute to the Petitioners in the instant case. Specifically, the Petitioners contend that under the principle of federalism the instant application of the Hobbs Act is unconstitutional.

3. THE LEGISLATIVE HISTORY OF THE HOBBS ACT DOES NOT SUPPORT ITS APPLICATION TO THE PETITIONER

The legislative history of the Hobbs Act, as discussed *supra*, indicates that Congress was outraged by the acts of robbery and extortion which took place as farmers and other salesmen attempted to bring and sell their goods across states lines. 91 CONG. REC. 11911 (Jennings) (1945). Congress was determined to use its power under the commerce clause to rectify the situation and prevent interstate commerce from being interfered with through extortion or robbery. There is no doubt that this goal of Congress was, and is, within its commerce-based legislative powers. *Id* at 11913 (Whittington). However, in the instant case, where all of the actions were local in nature, the application of the Hobbs Act is unconstitutional.

The government, in its prosecution of the Petitioners, stated that the loans taken out by the prospective deputies were insufficient in and of themselves to confer federal jurisdiction under the Hobbs Act.[4] The Petitioners agrees, as

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[4] ". . . during argument at the close of the government's case in chief, the government acknowledged that the mere borrowing of funds from First Metropolitan could not create a sufficient nexus with interstate commerce, but argues that because defendants' directed the prospective deputies to First Metropolitan for the purpose of securing loans to pay the defendants', interstate commerce was sufficiently effected. I fail to understand how defendants' direction of prospective deputies to First Metropolitan could convert the loan transaction from ones in which interstate commerce was not minimally effected in the transaction [into ones] in which interstate commerce was minimally effected." App. B, p. 14a.

did the District Court. *See*, App. B, p. 14a. However, the Sixth Circuit, in contradiction to the legislative purpose, history, and subsequent judicial interpretation of the Hobbs Act, grafted a *mens rea* element onto the Hobbs Act. The Sixth Circuit found that because the Petitioners may have known that the prospective deputies would seek loans from an institution engaged in interstate commerce, that this was sufficient to confer federal jurisdiction. *Mills*, 204 F. 3d at 670; *but cf.*, *U.S. v. Matteson*, 671 F.2d 1020 (7th Cir. 1982). This new application the Hobbs Act leads to the possibility that any state based, local crime of extortion or robbery of an individual may be federalized. This not only is in violation of the principles of federalism, but also is in express contradiction of the intent of Congress when it passed the Hobbs Act. *See*, 91 CONG. REC. 11910 (1945).

In passing the Hobbs Act, Congress was concerned that the members of the various state prosecuting agencies might not be able to handle the prosecution of the type of crimes the Hobbs Act aimed to eliminate. This concern was not only apparent in the 1945 debates, but also in the 1985-1986 debates over amending the Hobbs Act. 131 CONG. REC. 5955-01 (East) (1985). In 1985-86 several members of Congress proposed that the Hobbs Act be amended to serve its original purpose. *Id.* However, steps were taken to point out that the situation in the 1980's was different than that of the 1940's, and that local prosecutors were able to effectively handle the type of criminal actions the amendment sought to cover. *See*, 132 CONG. REC. 54327-03 (Kennedy) (1986); *Id.* at 54326-01 (Specter).

The prosecution of the Petitioners in the instant case not only fulfills the fears of the original drafters of the Hobbs Act, but also proves out the instincts and experience of Senators Kennedy and Spector. The original drafters of the

Hobbs Act were concerned that the act not effect the states rights to prosecute local crime occurring within its own borders. 91 CONG. REC. 11910. Senators Kennedy and Spector, forty years later, were weary of amending the Hobbs Act to cover actions they felt were well within the ability of the states to prosecute. 132 CONG. REC. 54326-01, 54327-03.

In the instant matter, the Petitioners' alleged crimes have been brought not only before a federal tribunal, but also before a state court. *See*, App. D. Both the Congress of 1945-6 and of 1985-6 felt that cases such as the Petitioners, where the states had not only the ability, but also the desire to prosecute defendants for crimes committed within state lines, the defendants should be prosecuted by the state, not the federal government. See, 91 CONG. REC. 11910(1945); 132 CONG REC. 54326-01 (1986). If the decision of the Sixth Circuit were allowed to stand, the police power of the federal government over state based, local crimes will grow only larger. That is in express contradiction to the legislative intent of Congress in passing the Hobbs Act.

The legislative history of the Hobbs Act is clear. The Act was intended to restrict criminal interference with interstate commerce. *See*, 91 CONG. REC. 11900. The Act was concerned with preventing persons from robbing or extorting persons selling or attempting to sell their goods across state lines. *Id.* at 11911. The Act was drawn to have broad powers within this narrow range of activities. It was not intended to cover each and every intrastate, local instance of robbery or extortion. *Id.* at 11910. The application of the Hobbs Act to the Petitioners cases turns the intent of the Hobbs Act upside down. The Hobbs Act was never meant to reach such local activities such as the ones with which the petitioner is charged. *See*, *Collins*, 40 F. 3d at 101;

Matteson, 671 at 125; *Buffey*, 899 F.2d 1404. Therefore, it is incumbent upon this Court to direct the federal prosecutors towards the correct standards for applying the Hobbs Act. Only by defining the correct constitutional standards will the intent of Congress be preserved and the rights of citizens be protected.

4. THE LEGISLATION, WITHOUT PROPER DEFINITION BY THIS COURT, LENDS ITSELF TO APPLICATION TO NEARLY ALL STATE BASED ROBBERY AND EXTORTION MATTERS

As applied to the Petitioners, the Hobbs Act commerce-based jurisdictional requirement becomes as non-specific and unconstitutional as the alleged requirements in the acts at issue in *Lopez* and *Morrison*. The government, in the Petitioners' cases, contend that it is the possibility that Petitioner Toarmina had knowledge that the prospective applicants might obtain funds from a business engaged in interstate commerce which makes a loan that otherwise would not suffice to confer federal jurisdiction into a loan that confers federal jurisdiction. *See*, *Mills*, 204 F. 3d at 673; App. B, p. 14a. Not only does this serve to engraft a *mens rea* requirement where none existed before, but also this line of thought is particularly troublesome to the future of separate state-federal jurisdiction. In attempting to prove their case at trial, the government offered several means by which commerce may have been beneficially effected. The government's arguments as to jurisdiction have been presented to this and other courts. Each time these arguments have been advanced, they have been rejected.

First, the government maintained that the prospective deputies took out insurance to cover the loan they obtained to pay the Petitioners. However, in several cases, courts have

found that the payment or obtaining of an insurance policy across state lines was insufficient to confer federal jurisdiction. *Jones*, 120 S. Ct. at 1910; *U.S. v. Johnson*, 194 F. 3d 657, 662 (5th Cir. 1999). Second, the government presented that the local lending institution to which several of the prospective deputies turned for a loan also made loans across state lines. However, that line of thought too has been rejected by several courts. *See*, *Jones*, 120 S. Ct. at 1910; *Matteson*, 671 F.2d at 1025.

As this Court has recognized, in the modern world almost anything can be said to affect interstate commerce. *Lopez* at 564; *Morrison* at 1753. The government in the Petitioners' cases has abused that fact. The purely local activity of obtaining a personal loan, either through a lending institution or a credit card, is being turned into a federal action. On a daily basis persons with purely local intents and local objectives are engaged on an individual level in the process of obtaining loans or using credit cards. Should the decision of the Sixth Circuit be allowed to stand then every action motivating a loan or any actions which prompted or resulted from a bank loan or the use a credit card would be sufficient to confer federal jurisdiction over individuals involved.

The Sixth Circuit's emphasis on the Petitioners' potential knowledge that the funds from the prospective deputies might come from a loan from an institution engaged in interstate commerce is illogical. First, as pointed out *supra*, that line of thought engrafts a *mens rea* requirement on to the Hobbs Act, which has never existed before. *Shareef*, 195 F. 3d. at 75 (holding that the government need not prove impact on commerce was intentional). Second, the concept that the federal government can gain jurisdiction over a defendant based solely upon the intent of an individual using

credit cards or obtaining a personal loan is, like the District Court stated, incomprehensible. *See*, App. B, 14a. Should the decision of the Sixth Circuit stand, it will certainly lead the federal government into areas which, until now, have been within the sole jurisdiction of the several states.

This is exactly the concern that prompted this Court's findings in *Lopez* and *Morrison*. *Lopez* at 563; *Morrison* at 1751. Specifically, this Court has expressed concern over the slippery slope line of thinking to which the statutes in *Lopez* and *Morrison* lent themselves. *Id.* Similarly, in the instant matter, this new application of the Hobbs Act in purely local matters, like the Petitioners', is serving to blur the lines between what is a traditional state concern and what may constitutionally become a federal concern.

In *Lopez*, this Court thoroughly analyzed the proper relationship between Congress and the Judiciary in determining the constitutional limits of the federal law. Recognizing that the federal legal landscape is one which cannot be precisely defined, this Court reiterated that the Judiciary must necessarily seek to define the ambiguities to ensure the proper limits on congressional power. *Lopez* at 566, *citing*, *McCulloch v. Maryland*, 4 L.Ed. 579 (1819) (the question respecting the extent of the powers actually granted, [to the federal government] is perpetually arising, and will probably continue as long as our system exists"); *Marbury v. Madison*, 2 L.Ed. 60 (1803) (holding that is the duty of the Judiciary "to say what the law is."). The determination of the meaning of the Hobbs Act jurisdictional requirement is precisely what the Petitioners are requesting the Court to do in this case. The Hobbs Act jurisdictional requirement, as applied to the Petitioners, so varies from the original intent of Congress, and is so duplicative of the rights of the states to prosecute crimes occurring within their own borders, that it

is unconstitutional. In *Lopez* and *Morrison* this Court re-asserted its position that the Judiciary, and no other branch of the federal government, has the final duty to determine the appropriate balance between the state and federal governments. The Petitioners simply request that the Court now act upon that duty and instruct the lower Courts and federal prosecutors as to an appropriate, constitutional application of the Hobbs Act jurisdictional requirement. This is the only manner in which the confusion surrounding the Hobbs Act jurisdictional requirement can be resolved. If the decision of the Sixth Circuit is allowed to stand without direction from this Court, then the precarious balance between state and federal duties will be indelibly shifted. The decision of the Sixth Circuit permits the federal government to prosecute any state crime involving money obtained through a bank or credit card loan. This is precisely the type of overreach of federal power this Court sought to curb in *Lopez*, *Morrison*, and *Jones*.

To end this type of abuse and imbalance, and to aid in the constitutional application of the Hobbs Act jurisdictional requirement as Congress originally intended, it is imperative that this Court set out specific guideline and definitions for the basis of federal jurisdiction under the Hobbs Act. Specifically, under the statutory construction principles in *U.S. v. Bass* and *U.S. v. American Trucking Ass'n* and the legislative history of the Hobbs Act, this Court should direct federal prosecutors to apply the Hobbs Act to cases involving a substantial, adverse effect on Congress.

Respectfully submitted,

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APPENDIX A

UNITED STATES COURT OF APPEALS
SIXTH CIRCUIT

[Filed February 28, 2000]

No. 98-6179

UNITED STATES of America, *Plaintiff-Appellant*,	)
v.	)
Alton Ray MILLS and Stephen D. Toarmina, *Defendants-Appellees*.	)

Argued: December 16, 1999

Before: NELSON and DAUGHTREY, Circuit Judges; DOWD, District Judge.*

OPINION

* The Honorable David D. Dowd, Jr., United States District Judge for the Northern District of Ohio, sitting by designation.

DAVID A. NELSON, Circuit Judge.

This is an appeal by the government from a judgment of acquittal on certain Hobbs Act charges and related conspiracy and money laundering counts of which a jury had found the defendants guilty. The question presented is whether the defendants' conduct – conduct that involved the solicitation and acceptance of bribes for appointments to deputy sheriff positions in Shelby County, Tennessee affected interstate commerce, thereby giving rise to federal jurisdiction under the Hobbs Act. Because one or more of the conspirators involved in the solicitation of the bribes had actual knowledge that the bribe money would be obtained through loans made in interstate commerce, we answer this question in the affirmative. The judgment of acquittal will be reversed.

I.

Defendant Alton Ray Mills was the Chief Deputy Sheriff of the Shelby County Sheriff's Department. Defendant Stephen D. Toarmina held the title of Staff Special Deputy in the Department. During the early 1990s, defendant Toarmina or an intermediary approached a number of young men with offers to see that "the man downtown" – who proved to be defendant Mills – would appoint them as full-time deputy sheriffs in exchange for the payment of bribes of approximately $3,500 for each position. Six of the young men accepted this deal, paid the bribes, and were subsequently hired by Mills.

All six of the aspiring deputy sheriffs were in their early 20s, and none had cash resources adequate to pay the

sums demanded. Defendant Toarmina or one of his co-conspirators encouraged each of the young men to borrow the money from a Memphis loan company – First Metropolitan Financial Services, Inc. – with which Toarmina had an ongoing relationship. It is undisputed that the business of First Metropolitan was interstate in character.

Five of the six young men accepted Toarmina's suggestion, signing First Metropolitan loan forms on which Toarmina was listed as "source" or "reference." First Metropolitan approved all five of the loan applications, notwithstanding that some of the applicants had negative credit references, and Toarmina personally co-signed at least one of the notes. The sixth individual, Derick Feathers, elected not to do business with First Metropolitan; he raised the bribe money by taking advances on his credit cards.

All of the funds in question were turned over to Toarmina, who deposited the money in the bank account of a commercial enterprise called the Toarmina Grocery and Market. The assets of the grocery business were subsequently used by Messrs. Toarmina and Mills to satisfy personal obligations.

In April of 1996 a federal grand jury handed up an 18-count indictment charging Toarmina and Mills with a variety of offenses. Count 1 charged the two officials with conspiracy between themselves and with other persons (known and unknown to the grand jury) to commit crimes that included affecting interstate commerce by extortion in violation of the Hobbs Act, 18 U.S.C. § 1951. The original indictment did not give the names of the unindicted co-conspirators known to the grand jury, but these names –

which included the names of the six young men referred to above – were later set forth in a bill of particulars. Other counts of the indictment charged the defendants with soliciting and accepting bribes in violation of 18 U.S.C. § 666, with specified extortionate acts violating the Hobbs Act, and with money laundering in violation of 18 U.S.C. § 1956(a).

The district court granted a pre-trial motion to dismiss the bribery counts on the ground that the transactions at issue did not meet the $5,000 threshold specified in 18 U.S.C. § 666. The government took an interlocutory appeal, and in *United States v. Mills,* 140 F.3d 630 (6th Cir. 1998), this court affirmed the dismissal of the bribery counts. The case subsequently went to trial on the counts that remained.

Pursuant to Rule 29, Fed.R.Crim. P., the defendants moved for a judgment of acquittal. The district court allowed the case to go to the jury, but informed the parties outside the presence of the jury that the motion would be granted with respect to the counts at issue here. The jury returned verdicts of guilty on all counts, and, for reasons explained by the district court on the record, the court followed through on its earlier promise to grant acquittals. The government has perfected a timely appeal.

II

The Hobbs Act provides, in relevant part, that

> "Whoever in any way or degree obstructs, delays, or affects commerce . . . by robbery or extortion or attempts or conspires so to do . . . shall be fined under this title or imprisoned not

> more than twenty years, or both." 18 U.S.C. § 1951(a).

As used in this section, "commerce" is defined in terms that include all commerce between any point within a state and any point outside the state, as well as "all other commerce over which the United States has jurisdiction." 18 U.S.C. § 1951(b)(3).

The Supreme Court has made it clear that the Hobbs Act's broad jurisdictional language is to be read as meaning what it says:

> "[The] Act speaks in broad language, manifesting a purpose to use all the constitutional power Congress has to punish interference with interstate commerce by extortion, robbery or physical violence. The Act outlaws such interference 'in any way or degree.' 18 U.S.C. § 1951(a)." *Stirone v. United States,* 361 U.S. 212, 215, 80 S.Ct. 270, 4 L.Ed.2d 252 (1960).

The maxim *"de minimis non curat lex"* does not apply in determining whether an effect on commerce is sufficient to satisfy the jurisdictional predicate of the Hobbs Act. It has long been the understanding in this circuit that even a "de minimis" effect on interstate commerce will suffice. See *United States v. Peete,* 919 F.2d 1168, 1174 (6th Cir. 1990) (citing cases). Both in our circuit and others, this understanding has survived the opinion in *United States v. Lopez,* 514 U.S. 549, 115 S.Ct. 1624, 131 L.Ed.2d 626 (1995), a case dealing with the constitutionality of a statute

that did not address interstate commerce at all. See *United States v. Smith* , 182 F.3d 452, 456 (6th Cir. 1999), where we joined "[a]ll of the other circuits that have considered the issue [in holding] that the *de minimis* standard for Hobbs Act charges survived *Lopez*. . . ."

The government argues here, as it did before the district court, that the requisite effect on commerce was shown by (among other things) proof that there was from the outset a reasonable probability that the would-be deputy sheriffs – none of whom seems to have had any appreciable savings would borrow the bribe money from the loan company recommended by defendant Toarmina or from some other interstate lender, such as a credit card company. In rejecting this argument, the district court relied primarily on two pre-*Lopez* opinions from other circuits, *United States v. Mattson,* 671 F.2d 1020 (7th Cir. 1982), and *United States v. Buffey,* 899 F.2d 1402 (4th Cir. 1990). We are not persuaded that either of these opinions should control the decision here.

Mattson involved a $3,000 bribe paid by one Donald Anderson, a Playboy Club electrician, to secure a supervising electrician's license from the City of Chicago. Although Anderson financed part of the bribe by taking out a personal loan, the Seventh Circuit's opinion gives no indication that the government tried to hang its hat on this peg in maintaining that the evidence established the necessary nexus to interstate commerce.

The Seventh Circuit acknowledged in *Mattson* that either a direct effect on commerce or an indirect effect would supply the requisite nexus. The court found no evidence of either type of effect, however, in the record before it.

First, the Seventh Circuit said,

> "There was no possibility of a direct effect on interstate commerce, because Anderson's payment of $3,000 for an electrician's license neither actually nor potentially affected the purchase of electrical supplies from outside Illinois for use in electrical repairs in the Playboy Building. Whether Playboy's own staff did the work, or Commercial Lighting was hired, the supplies would still have to be purchased outside Illinois by Playboy or Commercial Lighting. Neither of these enterprises were victims of the extortion." *Id.* at 1024.

Second, said the court, while the indirect effect represented by depletion of the assets of an interstate business can be jurisdictionally sufficient, there was no such depletion of assets in *Mattson:*

> "In the case before us, it was only Anderson's personal assets which were depleted by the $3,000 payment: The record clearly established that Playboy never reimbursed Anderson for the extorted sum. We would have a different case if Playboy, a business, had been the victim of the extortion instead of Anderson. But Anderson himself certainly was not conducting a business engaged in, or purchasing items from, interstate commerce. The victim in this case was an individual who

had no connection with interstate commerce at all. . . ." *Id.* at 1024-25.

The Seventh Circuit seems to have given no consideration to the possibility that Anderson's borrowing of a portion of the money used for the bribe might have given him a connection with interstate commerce.

The second opinion relied on by the district court, the Fourth Circuit's opinion in *Buffey,* involved an attempt to blackmail one James Allen, a wealthy businessman who had been guilty of a sexual indiscretion. The defendants conspired to demand $20,000 for keeping quiet about Allen's peccadillo, and the main question before the court was whether the indirect effect/"depletion of assets" theory could legitimately be applied to satisfy the Hobbs Act's jurisdictional prerequisite. ("[T]he government must concede," the court said, "[that] the acts [the defendants] conspired to commit would not have affected interstate commerce directly." *Buffey*, 899 F.2d at 1404.)

The company of which Mr. Allen was board chairman and majority stockholder was engaged in interstate commerce, and the *Buffey* court indicated that it would have recognized the existence of the required nexus with commerce had it been reasonably probable that Allen would dip into corporate funds in order to pay the blackmailers. Because of his wealth, however, the Fourth Circuit concluded that it was "highly unlikely that Allen would have satisfied an extortion demand by means of the Company's assets rather than his personal assets." *Id.* at 1405.

The government apparently argued that resort to company assets was not in fact unlikely, most of Mr. Allen's personal assets having been illiquid. The Fourth Circuit was not impressed by this argument, pointing out that Allen had easy access to certificates of deposit. "[E]ven aside from these assets," the court added, "we rely on the fact that, when pressed at oral argument, the government could offer no convincing explanations as to why Allen could not easily secure a loan against his ample non-liquid assets." *Id.* The Fourth Circuit's opinion contains no discussion of whether such a loan would itself have been likely to affect interstate commerce.

In the case at bar, advancing an argument of a sort apparently not made in *Mattson* or *Buffey,* the government contends that the requisite effect on interstate commerce has been demonstrated here because the proofs showed a realistic probability that the bribe money would be borrowed from a company engaged in interstate commerce. We find the government's argument persuasive, especially in view of the existence of substantial evidence that defendant Toarmina or one of his co-conspirators had actual knowledge of the interstate character of the funds before the money was turned over.

It is clear that unlike Mr. Allen in the *Buffey* case, the aspiring deputy sheriffs from whom the defendants in this case solicited bribes were not wealthy men. It was virtually certain that each of them would have to go into debt to raise the bribe money. With respect to the five young men who borrowed the bribe money from First Metropolitan (at annual percentage interest rates exceeding 30%), moreover, it is clear that defendant Toarmina or one of the co-conspirators who did the

soliciting on his behalf had actual knowledge of the source of the funds. The sixth young man, Derick Feathers, found First Metropolitan's interest rate too high, so he borrowed the money on his credit cards. There was uncontradicted testimony from the member of the conspiracy who solicited the bribe from Feathers that the conspirator knew this was where the money was coming from: "Mr. Feathers advised that he did not have the money. He advised that he could get some cash advances on his credit cards, which he did."

It is true that the borrowing of the money from interstate lenders could not have been expected to "interfere" with interstate commerce. We are satisfied, however, that the effect on commerce need not be adverse; even a beneficial effect can satisfy the statute. See *Mattson,* 671 F.2d at 1024. In exercising its constitutional power to regulate commerce among the several states, Congress often prohibits conduct that would have a stimulative effect on commerce as opposed to a depressive effect. And the Hobbs Act applies wherever extortion "in *any* way or degree . . . affects commerce. . . ." (Emphasis supplied.)

The judgment of acquittal is **REVERSED**, and the case is **REMANDED** for the entry of judgment in accordance with the jury's verdict.

APPENDIX B

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TENNESSEE

[Dated August 24, 1998]

No. 96-20080

United States	)
Plaintiff,	)
	)
v.	)
	)
Alton Ray Mills, and Stephen D. Toarmina,	)
Defendants.	)
	)

ORAL RULING OF COURT ON DEFENDANTS' MOTION FOR JUDGMENT ON ACQUITTAL

THE COURT: The verdict as announced by the foreperson will be filed and recorded however, pursuant to the -- the defendants have, pursuant to Rule 29 of the Federal Rules of Criminal Procedure moved this Court for a judgement of acquittal on all counts of the indictment because the government has failed to offer sufficient evidence establishing a nexus between the alleged extortion and interstate commerce. In considering a motion for a motion for acquittal, Rule 29 requires the Court to consider all of the evidence in the light most favorable to the government and to

grant the motion only if no rational trier of fact could find the essential elements of the charged crime beyond a reasonable doubt. Additionally, because I have reserved ruling on the defendants' motion until after the jury returned its verdict, pursuant to Rule 29(b) of the Federal Rules of Criminal Procedure, I base my holding today only on the evidence offered in the government's case in chief, since the defendants initially raised their motions at the close of the government's evidence.

The parties were informed of the Court's intended disposition prior to closing argument, but because in this Court's opinion justice required that the government have the opportunity to present the issues now ruled on by this Court to a jury and to preserve their right of appeal, I have delayed this ruling until now.

I first consider those counts of the indictment that apply to both Mr. Toarmina and Mr. Mills. With respect to the extortion, viewed in the light most favorable to the government, the proof surrounding Counts 3, 5, 7, 9 and 11 establishes that the defendants obtained payments of thirty five hundred dollars from specific individuals in exchange for selection to full time commissioned deputy sheriff positions with the Shelby County Sheriff's Department. The primary proof regarding the connection between interstate commerce and the extortion alleged in those Counts, 3, 5, 7, 9, and 11 consist of the following evidence.

First, in order to assist the victims named in Count 3, 5, 7, 9 and 11 in raising the funds necessary to satisfy the defendants demand for money, the defendants directed the prospective deputies to borrow money from the First

Metropolitan Financial Services, Inc., a lending institution that does make loans to customers in interstate commerce. Based on the proof submitted, a rational trier of fact could have inferred that the defendants arranged for the victims' loans from First Metropolitan to be approved.

Second, to insure the repayment of these loans as a part of the loan transaction, the prospective deputies purchased optional life health and disability insurance from First Metropolitan, which was serving as an agent for a Florida based insurance carrier. The Florida insurance carrier received premiums on the policies.

Third, the government offered proof that the Shelby County Sheriff's Department engages in interstate commerce on a regular basis by transporting prisoners across state lines, making interstate telephone calls, and purchasing supplied in interstate commerce.

Fourth, the government offered proof that the defendant, Toarmina, owned and operated a grocery store in Memphis, Tennessee that purchased beer in interstate commerce and other supplies, and that the defendant, Toarmina, deposited the extorted payments received from the prospective deputies into the grocery store's business account.

Fifth, the government argues that the Sheriff's Department, an entity engaged in interstate commerce, could have been -- not was -- deprived of the services it had bargained for when it hired these deputy sheriffs who paid money to get the jobs.

I find that these facts are insufficient as a matter of law to create a reasonable probability that the defendants' alleged extortion would have a de minimis effect on interstate commerce. And I cite you to United States vs. Wilkinson, 26 F.3d 623, a 6th Circuit 1994 case, stating the standard of review for the nexus to interstate commerce required under the Hobbs Act.

There is no evidence in the record to suggest that the victims named in Counts 3, 5, 7, 9, and 11 used anything other than their own personal assets in paying the amount demanded by the defendants, nor is there proof that any individual named in Counts 3, 5, 7, 9 and 11 engaged in interstate commerce. The fact that the victims named in those counts resorted to borrowing money from a lending institution engaged in interstate commerce in order to raise the personal assets needed to pay the defendants does not alter this conclusion. The government can make no claim that First Metropolitan's assets were depleted by the transactions in that First Metropolitan received a promissory note that included an extremely high interest rate in exchange for the payment of each loan. In fact, during argument at the close of the government's case in chief, the government acknowledged that the mere borrowing of funds from First Metropolitan could not create a sufficient nexus with interstate commerce, but argued that because the defendants directed the prospective deputies to First Metropolitan for the purpose of securing loans to pay the defendants, interstate commerce was sufficiently effected. I fail to understand how the defendants' direction of the prospective deputizes to First Metropolitan could convert the loan transactions from ones in which interstate commerce was not minimally effected in the

transactions in which interstate commerce was minimally effected.

In short, I am persuaded by the decisions of the 7th Circuit in United States vs. Mattson, 671 F. 2d, 1024 and the 4th Circuit in United States vs. Buffey, 899 F. 2d 1402, in which both courts held that the mere depletion of the personal assets of an individual does not create a reasonable probability of a de minimis effect on interstate commerce and then implied that when an individual takes out a personal loan for the purpose of using the loan proceeds to pay an extortion demand, only the victims'personal assets are depleted.

Although the plain language of United States Code, Title 18, Section 1951, suggests that beneficial effects on interstate commerce may satisfy the interstate commerce requirement, I conclude that the Court does not need to reach that issue of whether the government may satisfy the Hobbs Act interstate commerce requirement with proof of either adverse or beneficial effect on interstate commerce.

Insurance premiums received by First Metropolitan, although beneficial, are simply too far removed from the extortionist conduct to even satisfy the de minimis requirement of the Hobbs Act. Quoting from Mattson, a de minimis effect on interstate commerce is sufficient for federal jurisdiction, but the effect must be more than a speculative attenuated one step removed kind of effect.

I also conclude that Toarmina's deposits of the payments made by the prospective deputies in his grocery store business account are also far too removed from the defendants alleged extortion to even minimally effect

commerce. The rule of law which would allow an extortionist's subsequent use in interstate commerce of his extortion proceeds to satisfy federal jurisdiction would render federal jurisdiction under the Hobbs Act effectively limitless and would thereby not only exceed Congress' intent in enacting the Hobbs Act but would also exceed Congress' power under the commerce clause.

Neither can the Shelby County Sheriffs Department connection with interstate commerce form the basis for federal jurisdiction in this case. Whether the Sheriff's Department hired its deputies through extortionist practices or legitimate channels, the department would still have had to engage in precisely the same interstate practices of interstate prisoner pick-ups, interstate telephone calls, and interstate supply purchases. In other words, the hiring of the Sheriff's deputies named in Counts 3, 5, 7, 9 and 11 had no actual or potential effect on the Shelby County Sheriff's Department's relationship with interstate commerce.

Referring to Mattson again, the 7th Circuit declined federal jurisdiction for similar reasons when it concluded that an employee's ability to obtain an electrician's license through extortion would have no effect on interstate commerce because, and I quote from the 7th Circuit case, "Whether Playboy's own staff did the work, or Commercial Lighting was hired, the supplies would still have to be purchased outside of Illinois by Playboy or Commercial Lighting."

In another effort to use the Sheriff's Department interstate commerce connection to support federal jurisdiction in this case, the government has directed the Court's attention to the 11th Circuit decision in United States vs. Alexander,

which was an extortion case in which the court held that the government presented sufficient evidence to establish that a school board's assets had been depleted, where the proof showed that the architects hired by the school board were selected based upon their willingness to place kickbacks rather than based upon their professional abilities. The 11th Circuit's decision, however, turned entirely upon proof of the architects extremely poor performance, which demonstrated that the school board received less than it otherwise would have as a result of the extortionate scheme. The 11th Circuit concluded that in addition to the architects themselves, the school board, through the architects poor performance, was also a victim of the extortion scheme.

The government's reliance on Alexander, however, in this case is misplaced because the government has not offered any evidence suggesting that any of the individuals named in Counts 3, 5, 7, 9 or 11 who paid has performed his deputy sheriff duties in an unsatisfactory manner. The mere possibility of unsatisfactory performance is not sufficient.

For these reasons, I conclude that the government has failed to offer sufficient evidence establishing that the extortion charged in Counts 3, 5, 7, 9 and 11 had a reasonable probability of creating a de minimis effect on interstate commerce. I therefore, grant the defendants respective motions for judgements of acquittal as to Counts 3, 5, 7, 9 and 11

I now turn to Count 13 because the proof supporting that count differs slightly from the other extortion counts involving both Mr. Mills and Mr. Toarmina. According to the proof, the victim named in Count 13 obtained his funds

necessary to pay the defendants by obtaining a cash advance from his credit card company. In all other respects the proof supporting the connection between interstate commerce and the conduct alleged in Count 13 is the same as the other counts, 3, 5, 7, 9 and 11. A personal loan from a credit card company has no greater effect on interstate commerce than the personal loans from First Metropolitan. I therefore grant the defendants respective motions for judgement of acquittal as to Count 13.

With respect to the money laundering counts that apply to both Mr. Toarmina and Mills, I turn now to Counts 15, 16, 17, and 18, each of which allege money laundering in violation of Section 1956 of Title 18, U. S. Code. Considering the 6th Circuit's decision affirming the Court's dismissal of the counts charging violations of 18 USC, Section 666, and based on the proof that was presented at this trial, the only remaining predicate of unlawful activity upon which the money laundering counts could be based is a violation of 18 USC, Section 1951. The proof also shows that the only financial transactions that could support conviction for money laundering are the financial transactions arising from the extortion alleged in Counts 3, 5, 7, 9, 11, and 13. The government's failure to prove the required connection between interstate commerce and the commerce alleged in those counts not only precludes conviction on these substantive extortion counts, but also forecloses the government's ability to use the extortion alleged in Counts 3, 5, 7, 9, 11, and 13 as the predicate unlawful activity necessary for the money laundering counts. The Court therefore grants the defendants' respective motions for judgement of acquittal as to Counts 15, 16, 17, and 18.

Turning now to Count 1 of the indictment, the conspiracy count, and the only remaining count involving both defendants, Count 1 charges the defendants with conspiracy to violate 18 USC, Section 1951 and 18 USC, Section 1956. With respect to the extortion object of the conspiracy, according to the 6th Circuit, in order to withstand a motion for judgement of acquittal on an extortion conspiracy count, based upon the absence of a sufficient effect on interstate commerce, the government must prove that the conspirators' extortion scheme is successful and possessed a reasonable possibility of effecting interstate commerce. I cite you to United States. vs. DiCarlantonio, 870 F.2d 1058, a 6th Circuit case.

Viewed in the light most favorable to the government, the proof showed only that the defendants agreed to extort money from the personal assets from the individuals named in Counts 3, 5, 7, 9, 11, and 13, who are the only individuals named in the indictment proven to have purchased full time commissioned deputy sheriff positions. For the same reasons that the government has failed to present sufficient evidence of an effect on interstate commerce with respect to the extortion alleged in Counts 3, 5, 7, 9, 11, and 13, the court also concludes that the proof regarding the defendants' agreement to extort money from the individuals who purchased the full time deputy sheriff positions failed to show a reasonable probability that the success of the defendants' extortion plan could create a de minimis effect on interstate commerce. The Court therefore grants defendants' respective motions for judgement of acquittal with respect to the extortion objects of Count 1's conspiracy.

Turning to the money laundering object of the conspiracy, viewed in the light most favorable to the government, the proof shows only that the defendants agreed to conduct financial transactions involving the proceeds of the extortion alleged in Counts 3, 5, 7, 9, 11, and 13. For the same reasons that I concluded that the government may not use the alleged extortion in those counts as the predicate unlawful activity for the substantive money laundering counts, the Court also concludes that the government has not offered any evidence upon which a rational trier of fact could conclude that the defendants agreed to engage in financial transactions that involved the proceeds of some form of unlawful activity -- federal unlawful activity. I therefore grant the defendants' respective motions for a judgement of acquittal with respect to the money laundering object of the Count 1 conspiracy.

The only remaining count to be considered is Count which involved only Mr. Mills. Viewed in the light most favorable to the government, the proof shows that Count 14's victim paid Mr. Avent forty-five hundred dollars in cash secured by means of a check drawn on the victim's business account. The victim's business was an auto recovery company involved in interstate commerce. In United States vs. Buffey, the 4th Circuit case that I referred to earlier stated as dicta that if an individual, in order to satisfy an extortion demand, resorts to the assets of a business engaged in interstate commerce, the requisite interstate commerce nexus under the Hobbs Act is satisfied. I agree with the reasoning of the Buffey court and hold that in this case the government has presented sufficient evidence for a jury to conclude that Avent's extortion caused the individual named in Count 14 to deplete the assets of a business engaged in interstate

commerce. The Court therefore finds that the government has presented sufficient evidence that the de minimis effect on interstate commerce with respect to the allegations contained in Count 14, and accordingly the Court denies defendant, Mills, motion for a judgement of acquittal with respect to Count 14.

This is a case in which the governments' proof supported, in some cases strongly, the allegations of extortion against Mr. Toarmina, and it is disappointing that Mr. Toarmina has not been prosecuted by the Shelby County District Attorney's office. It may in fact be that the Shelby County District Attorney's office was relying on the federal government to prosecute this case. Although the United States government is to be commended for its assistance in the delicate task of investigating corruption within local Shelby County government, and particularly the Sheriff's office, the inherent difficulty of local government to police its own police cannot alone serve as a surrogate for valid federal jurisdiction without some proven effect on interstate commerce. Where serious crimes are being committed, whether by ordinary citizens or high ranking officials, it is the responsibility of the law enforcement officials of the jurisdiction whose laws are suspected of being violated to investigate and, if the evidence is sufficient, to prosecute.

For the reasons stated, the Court grants the defendants' motion for acquittal on all counts except Count 14. The motion for judgement of acquittal on Count 14 is denied.

APPENDIX C

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

[Filed May 4, 2000]

No. 98-6179/6698

UNITED STATES OF AMERICA,
Plaintiff-Appellant (98-6179)
Plaintiff-Appellee (98-6698),

v.

ALTON RAY MILLS,
Defendant-Appellant (98-6698),

ALTON RAY MILLS and STEPHEN TOARMINA,
Defendants-Appellants (98-6179).

ORDER

BEFORE: NELSON and DAUGHTREY, Circuit Judges; and DOWD,* District Judge.

* Hon. David D. Dowd, Jr., Senior United States District Judge for the Northern District of Ohio, sitting by designation.

The court having received a petition for rehearing en banc, and the petition having been circulated not only to the original panel members but also to all other active judges of this court, and no judge of this court having requested a vote on the suggestion for rehearing en banc, the petition for rehearing has been referred to the original panel.

The panel has further reviewed the petitiion for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the cases. Accordingly, the petition is denied.

ENTERED BY ORDER OF THE COURT

/s/_____

Leonard Green, Clerk

APPENDIX D

STATE OF TENNESSEE
CRIMINAL COURT OF SHELBY COUNTY

[Dated November 19, 1998]

GRAND JURY INDICTMENTS

STATE OF TENNESSEE	)	CRIMINAL COURT OF
SHELBY COUNTY	)	SHELBY COUNTY
	)	

NOVEMBER TERM, 1998

Count 1

THE GRAND JURORS of the State of Tennessee, duly selected, empaneled, sworn and charged to inquire for the body of the County of Shelby, Tennessee, upon their oath, present that:

ALTON RAY MILLS
and
STEPHEN D. TOARMINA

beginning on a date unknown to the Grand Jurors aforesaid, but at least in September, 1994, and continuing thereafter to in or about January, 1995, in Shelby County, Tennessee, and before the finding of this indictment, did unlawfully and knowingly obtain property, to wit: a sum of money, over the value of One Thousand Dollars ($1,000.00), proper goods and chattels of DARREN T. FEATHERS, without the effective consent of the said DARREN T. FEATHERS, with intent to deprive the owner thereof, in violation of Tennessee

Code Annotated 39-14-103; the said crime having been concealed by the aforesaid ALTON RAY MILLS and the aforesaid STEPHEN D. TOARMINA, from date of the commission of the offense until at least February 28, 1995, against the peace and dignity of the State of Tennessee.

/s/_____
District Attorney General
30th Judicial District

STATE OF TENNESSEE)
SHELBY COUNTY)
)

CRIMINAL COURT OF
SHELBY COUNTY

NOVEMBER TERM, 1998

Count 2

THE GRAND JURORS of the State of Tennessee, duly selected, empaneled, sworn and charged to inquire for the body of the County of Shelby, Tennessee, upon their oath, present that:

ALTON RAY MILLS
and
STEPHEN D. TOARMINA

beginning on a date unknown to the Grand Jurors aforesaid, but at least in September, 1994, and continuing thereafter to in or about January, 1995, in Shelby County, Tennessee, and before the finding of this indictment, did unlawfully and knowingly exercise control over property, to wit: a sum of money, over the value of One Thousand Dollars ($1,000.00), proper goods and chattels of DARREN T. FEATHERS, without the effective consent of the said DARREN T. FEATHERS, with intent to deprive the owner thereof, in violation of Tennessee Code Annotated 39-14-103; the said crime having been concealed by the aforesaid ALTON RAY MILLS and the aforesaid STEPHEN D. TOARMINA, from date of the commission of the offense until at least February 28, 1995, against the peace and dignity of the State of Tennessee.

/s/_____
District Attorney General
30th Judicial District

A.G. FILE # AC0308

NO. 98-13772

STATE OF TENNESSEE
Indictment for

T.C.A. 39-14-103
T.C.A. 39-14-103

THEFT OF PROPERTY
THEFT OF PROPERTY

(SCATS - 21039)
(SCATS - 21039)

VS.
ALTON RAY MILLS
and
STEPHEN D. TOARMINA

WITNESSES:
Summon for State

D. McDONALD, FBI
LEONARD T. ROVERY, 2301 DAYWOOD
WILLIAM O. SPEIGHT, 2256 LAKE HILL CT., CORDOVA, TN
GEORGE H. STAUFFER, 9281 FLETCHER TRACE PKWY.
ALLEN BEENE, 3793 AUDUBOND RIDGE, BARTLETT, TN
GEORGE M. SELBY, JR., 1301 VOLLEYBALL LANE 252, CORDOVA, TN
DARREN T. FEATHERS, 6079 FLYNT HILL, BARTLETT, TN

D. McDONALD
Prosecutor

A TRUE BILL

/s/_____
Foreman of the Grand Jury

Date Indictment Returned: 11/19/98

STATE OF TENNESSEE)
SHELBY COUNTY)
)

CRIMINAL COURT OF
SHELBY COUNTY

NOVEMBER TERM, 1998

Count 1

THE GRAND JURORS of the State of Tennessee, duly selected, empaneled, sworn and charged to inquire for the body of the County of Shelby, Tennessee, upon their oath, present that:

ALTON RAY MILLS
and
STEPHEN D. TOARMINA

beginning on a date unknown to the Grand Jurors aforesaid, but at least in February, 1994, and continuing thereafter to in or about January, 1995, in Shelby County, Tennessee, and before the finding of this indictment, did unlawfully and knowingly obtain property, to wit: a sum of money, over the value of One Thousand Dollars ($1,000.00), proper goods and chattels of GEORGE M. SELBY, JR., without the effective consent of the said GEORGE M. SELBY, JR., with intent to deprive the owner thereof, in violation of Tennessee Code Annotated 39-14-103; the said crime having been concealed by the aforesaid ALTON RAY MILLS and the aforesaid STEPHEN D. TOARMINA, from date of the commission of the offense until at least February 28, 1995, against the peace and dignity of the State of Tennessee.

/s/_____
District Attorney General
30th Judicial District

STATE OF TENNESSEE)
SHELBY COUNTY)
)

CRIMINAL COURT OF
SHELBY COUNTY

NOVEMBER TERM, 1998

Count 2

THE GRAND JURORS of the State of Tennessee, duly selected, empaneled, sworn and charged to inquire for the body of the County of Shelby, Tennessee, upon their oath, present that:

ALTON RAY MILLS
and
STEPHEN D. TOARMINA

beginning on a date unknown to the Grand Jurors aforesaid, but at least in February, 1994, and continuing thereafter to in or about January, 1995, in Shelby County, Tennessee, and before the finding of this indictment, did unlawfully and knowingly exercise control over property, to wit: a sum of money, over the value of One Thousand Dollars ($1,000.00), proper goods and chattels of GEORGE M. SELBY, JR., without the effective consent of the said GEORGE M. SELBY, JR., with intent to deprive the owner thereof, in violation of Tennessee Code Annotated 39-14-103; the said crime having been concealed by the aforesaid ALTON RAY MILLS and the aforesaid STEPHEN D. TOARMINA, from date of the commission of the offense until at least February 28, 1995, against the peace and dignity of the State of Tennessee.

/s/_____
District Attorney General
30th Judicial District

State Court Indictments - 11/19/98

A.G. FILE # AC0308

No. 98-13774

STATE OF TENNESSEE
Indictment for

T.C.A. 39-14-103
T.C.A. 39-14-103

THEFT OF PROPERTY
THEFT OF PROPERTY

(SCATS - 21039)
(SCATS - 21039)

VS.
ALTON RAY MILLS
and
STEPHEN D. TOARMINA

WITNESSES:
Summon for State

D. McDONALD, FBI
LEONARD T. ROVERY, 2301 DAYWOOD
WILLIAM O. SPEIGHT, 2256 LAKE HILL CT., CORDOVA, TN
GEORGE H. STAUFFER, 9281 FLETCHER TRACE PKWY.
ALLEN BEENE, 3793 AUDUBOND RIDGE, BARTLETT, TN
GEORGE M. SELBY, JR., 1301 VOLLEYBALL LANE #252, CORDOVA, TN
DARREN T. FEATHERS, 6079 FLYNT HILL, BARTLETT, TN

D. McDONALD
Prosecutor

A TRUE BILL

/s/_____
Foreman of the Grand Jury

Date Indictment Returned: 11/19/98

State Court Indictments - 11/19/98

STATE OF TENNESSEE)
SHELBY COUNTY)
)

CRIMINAL COURT OF
SHELBY COUNTY

NOVEMBER TERM, 1998

Count 1

THE GRAND JURORS of the State of Tennessee, duly selected, empaneled, sworn and charged to inquire for the body of the County of Shelby, Tennessee, upon their oath, present that:

ALTON RAY MILLS
and
STEPHEN D. TOARMINA

beginning on a date unknown to the Grand Jurors aforesaid, but at least in March, 1994, and continuing thereafter to in or about January, 1995, in Shelby County, Tennessee, and before the finding of this indictment, did unlawfully and knowingly obtain property, to wit: a sum of money, over the value of One Thousand Dollars ($1,000.00), proper goods and chattels of ALLEN BEENE, without the effective consent of the said ALLEN BEENE, with intent to deprive the owner thereof, in violation of Tennessee Code Annotated 39-14-103; the said crime having been concealed by the aforesaid ALTON RAY MILLS and the aforesaid STEPHEN D. TOARMINA, from date of the commission of the offense until at least February 28, 1995, against the peace and dignity of the State of Tennessee.

/s/_____
District Attorney General
30th Judicial District

State Court Indictments - 11/19/98

STATE OF TENNESSEE	)	CRIMINAL COURT OF
SHELBY COUNTY	)	SHELBY COUNTY
	)	

NOVEMBER TERM, 1998

Count 2

THE GRAND JURORS of the State of Tennessee, duly selected, empaneled, sworn and charged to inquire for the body of the County of Shelby, Tennessee, upon their oath, present that:

ALTON RAY MILLS
and
STEPHEN D. TOARMINA

beginning on a date unknown to the Grand Jurors aforesaid, but at least in March, 1994, and continuing thereafter to in or about January, 1995, in Shelby County, Tennessee, and before the finding of this indictment, did unlawfully and knowingly exercise control over property, to wit: a sum of money, over the value of One Thousand Dollars ($1,000.00), proper goods and chattels of ALLEN BEENE, without the effective consent of the said ALLEN BEENE, with intent to deprive the owner thereof, in violation of Tennessee Code Annotated 39-14-103; the said crime having been concealed by the aforesaid ALTON RAY MILLS and the aforesaid STEPHEN D. TOARMINA, from date of the commission of the offense until at least February 28, 1995, against the peace and dignity of the State of Tennessee.

/s/_____
District Attorney General
30th Judicial District

State Court Indictments - 11/19/98

A.G. FILE # AC0308

NO. 98-13775

STATE OF TENNESSEE
Indictment for

T.C.A. 39-14-103
T.C.A. 39-14-103

THEFT OF PROPERTY
THEFT OF PROPERTY

(SCATS - 21039)
(SCATS - 21039)

VS.

ALTON RAY MILLS
and
STEPHEN D. TOARMINA

WITNESSES:
Summon for State

D. McDONALD, FBI
LEONARD T. ROVERY, 2301 DAYWOOD
WILLIAM O. SPEIGHT, 2256 LAKE HILL CT., CORDOVA, TN
GEORGE H. STAUFFER, 9281 FLETCHER TRACE PKWY.
ALLEN BEENE, 3793 AUDUBOND RIDGE, BARTLETT, TN
GEORGE M. SELBY, JR., 1301 VOLLEYBALL LANE #252, CORDOVA, TN

DARREN T. FEATHERS, 6079 FLYNT HILL,
BARTLETT, TN

D. McDONALD
Prosecutor

A TRUE BILL

/s/_____
Foreman of the Grand Jury

Date Indictment Returned: 11/19/98

STATE OF TENNESSEE)
) CRIMINAL COURT OF
) SHELBY COUNTY
SHELBY COUNTY)

NOVEMBER TERM, 1998

Count 1

THE GRAND JURORS of the State of Tennessee, duly selected, empaneled, sworn and charged to inquire for the body of the County of Shelby, Tennessee, upon their oath, present that:

ALTON RAY MILLS
and
STEPHEN D. TOARMINA

beginning on a date unknown to the Grand Jurors aforesaid, but at least in June, 1993, and continuing thereafter to in or about January, 1995, in Shelby County, Tennessee, and before the finding of this indictment, did unlawfully and knowingly obtain property, to wit: a sum of money, over the value of One Thousand Dollars ($1,000.00), proper goods and chattels of GEORGE H. STAUFFER, without the effective consent of the said GEORGE H. STAUFFER, with intent to deprive the owner thereof, in violation of Tennessee Code Annotated 3 9-14-103; the said crime having been concealed by the aforesaid ALTON RAY MILLS and the aforesaid STEPHEN D. TOARMINA, from date of the commission of the offense until at least February 28, 1995, against the peace and dignity of the State of Tennessee.

/s/_____
District Attorney General
30th Judicial District

STATE OF TENNESSEE)
SHELBY COUNTY)
)

CRIMINAL COURT OF
SHELBY COUNTY

NOVEMBER TERM, 1998

Count 2

THE GRAND JURORS of the State of Tennessee, duly selected, empaneled, sworn and charged to inquire for the body of the County of Shelby, Tennessee, upon their oath, present that:

ALTON RAY MILLS
and
STEPHEN D. TOARMINA

beginning on a date unknown to the Grand Jurors aforesaid, but at least in June, 1993, and continuing thereafter to in or about January, 1995, in Shelby County, Tennessee, and before the finding of this indictment, did unlawfully and knowingly exercise control over property, to wit: a sum of money, over the value of One Thousand Dollars ($1,000.00), proper goods and chattels of GEORGE H. STAUFFER, without the effective consent of the said GEORGE H. STAUFFER, with intent to deprive the owner thereof, in violation of Tennessee Code Annotated 39-14-103; the said crime having been concealed by the aforesaid ALTON RAY MILLS and the aforesaid STEPHEN D. TOARMINA, from date of the commission of the offense until at least February 28, 1995, against the peace and dignity of the State of Tennessee.

/s/_____
District Attorney General
30th Judicial District

State Court Indictments - 11/19/98

A.G. FILE # AC0308

NO: 98-13776

STATE OF TENNESSEE
Indictment for

T.C.A. 39-14-103
T.C.A. 39-14-103

THEFT OF PROPERTY
THEFT OF PROPERTY

(SCATS - 21039)
(SCATS - 21039)

VS.

ALTON RAY MILLS
and
STEPHEN D. TOARMINA

WITNESSES:
Summon for State

D. McDONALD, FBI
LEONARD T. ROVERY, 2301 DAYWOOD
WILLIAM O. SPEIGHT, 2256 LAKE HILL CT., CORDOVA, TN
GEORGE H. STAUFFER, 9281 FLETCHER TRACE PKWY.
ALLEN BEENE, 3793 AUDUBOND RIDGE, BARTLETT, TN
GEORGE M. SELBY, JR., 1301 VOLLEYBALL LANE #252, CORDOVA, TN

DARREN T. FEATHERS, 6079 FLYNT HILL,
BARTLETT, TN

D. McDONALD
Prosecutor

A TRUE BILL

/s/_____
Foreman of the Grand Jury

Date Indictment Returned: 11/19/98

STATE OF TENNESSEE)
SHELBY COUNTY)
)

CRIMINAL COURT OF
SHELBY COUNTY

NOVEMBER TERM, 1998

Count 1

THE GRAND JURORS of the State of Tennessee, duly selected, empaneled, sworn and charged to inquire for the body of the County of Shelby, Tennessee, upon their oath, present that:

ALTON RAY MILLS
and
STEPHEN D. TOARMINA

beginning on a date unknown to the Grand Jurors aforesaid, but at least in March, 1991, and continuing thereafter to in or about January, 1995, in Shelby County, Tennessee, and before the finding of this indictment, did unlawfully and knowingly obtain property, to wit: a sum of money, over the value of Ten Thousand Dollars ($10,000.00), proper goods and chattels of LEONARD T. ROVERY, WILLIAM O. SPEIGHT, GEORGE H. STAUFFER, GEORGE M. SELBY, JR., ALLEN BEENE and DARREN T. FEATHERS, without the effective consent of the said LEONARD T. ROVERY, the said WILLIAM O. SPEIGHT, the said GEORGE H. STAUFFER, the said GEORGE M. SELBY, JR., the said ALLEN BEENE and the said DARREN T. FEATHERS, with intent to deprive the owners thereof, in violation of Tennessee Code Annotated 39-14-103; the said crime having been concealed by the aforesaid ALTON RAY MILLS and the aforesaid STEPHEN D. TOARMINA, from date of the commission of the offense

until at least February 28, 1995, against the peace and dignity of the State of Tennessee.

/s/_____
District Attorney General
30th Judicial District

STATE OF TENNESSEE)
SHELBY COUNTY)
)

CRIMINAL COURT OF
SHELBY COUNTY

NOVEMBER TERM, 1998

Count 2

THE GRAND JURORS of the State of Tennessee, duly selected, empaneled, sworn and charged to inquire for the body of the County of Shelby, Tennessee, upon their oath, present that:

ALTON RAY MILLS
and
STEPHEN D. TOARMINA

beginning on a date unknown to the Grand Jurors aforesaid, but at least in March, 1991, and continuing thereafter to in or about January, 1995, in Shelby County, Tennessee, and before the finding of this indictment, did unlawfully and knowingly exercise control over property, to wit: the sum of money, over the value of Ten Thousand Dollars ($10,000.00), proper goods and chattels of LEONARD T. ROVERY, WILLIAM O. SPEIGHT, GEORGE H. STAUFFER, GEORGE M. SELBY, JR., ALLEN BEENE and DARREN T. FEATHERS, without the effective consent of the said LEONARD T. ROVERY, the said WILLIAM O. SPEIGHT, the said GEORGE H. STAUFFER, the said GEORGE M. SELBY, JR., the said ALLEN BEENE and the said DARREN T. FEATHERS, with intent to deprive the owners thereof, in violation of Tennessee Code Annotated 39-14-103; the said crime having been concealed by the aforesaid ALTON RAY MILLS and the aforesaid STEPHEN D. TOARMINA, from date of the commission of the offense

until at least February 28, 1995, against the peace and dignity of the State of Tennessee.

/s/_____
District Attorney General
30th Judicial District

A.G. FILE # AC0308

NO. 98-13777

STATE OF TENNESSEE
Indictment for

T.C.A. 39-14-103
T.C.A. 39-14-103

THEFT OF PROPERTY
THEFT OF PROPERTY

(SCATS - 21039)
(SCATS - 21039)

VS.

ALTON RAY MILLS
and
STEPHEN D. TOARMINA

WITNESSES:
Summon for State

D. McDONALD, FBI
LEONARD T. ROVERY, 2301 DAYWOOD
WILLIAM O. SPEIGHT, 2256 LAKE HILL CT., CORDOVA, TN
GEORGE H. STAUFFER, 9281 FLETCHER TRACE PKWY.
ALLEN BEENE, 3793 AUDUBOND RIDGE, BARTLETT, TN
GEORGE M. SELBY, JR., 1301 VOLLEYBALL LANE #252, CORDOVA, TN

DARREN T. FEATHERS, 6079 FLYNT HILL,
BARTLETT, TN

D. McDONALD
Prosecutor

A TRUE BILL

/s/_____
Foreman for the Grand Jury

Date Indictment Returned: 11/19/98

STATE OF TENNESSEE)
SHELBY COUNTY)
)

CRIMINAL COURT OF
SHELBY COUNTY

NOVEMBER TERM, 1998

Count 1

THE GRAND JURORS of the State of Tennessee, duly selected, empaneled, sworn and charged to inquire for the body of the County of Shelby, Tennessee, upon their oath, present that:

ALTON RAY MILLS
and
STEPHEN D. TOARMINA

beginning on a date unknown to the Grand Jurors aforesaid, but at least in March, 1991, and continuing thereafter to in or about January, 1995, in Shelby County, Tennessee, and before the finding of this indictment, did unlawfully and knowingly obtain property, to wit: a sum of money, over the value of One Thousand Dollars ($1,000.00), proper goods and chattels of LEONARD T. ROVERY, without the effective consent of the said LEONARD T. ROVERY, with intent to deprive the owner thereof, in violation of Tennessee Code Annotated 39-14-103; the said crime having been concealed by the aforesaid ALTON RAY MILLS and the aforesaid STEPHEN D. TOARMINA, from date of the commission of the offense until at least February 28, 1995, against the peace and dignity of the State of Tennessee.

/s/_____
District Attorney General
30th Judicial District

State Court Indictments - 11/19/98

STATE OF TENNESSEE)
SHELBY COUNTY)
)

CRIMINAL COURT OF
SHELBY COUNTY

NOVEMBER TERM, 1998

Count 2

THE GRAND JURORS of the State of Tennessee, duly selected, empaneled, sworn and charged to inquire for the body of the County of Shelby, Tennessee, upon their oath, present that:

ALTON RAY MILLS
and
STEPHEN D. TOARMINA

beginning on a date unknown to the Grand Jurors aforesaid, but at least in March, 1991, and continuing thereafter to in or about January, 1995, in Shelby County, Tennessee, and before the finding of this indictment, did unlawfully and knowingly exercise control over property, to wit: a sum of money, over the value of One Thousand Dollars ($1,000.00), proper goods and chattels of LEONARD T. ROVERY, without the effective consent of the said LEONARD T. ROVERY, with intent to deprive the owner thereof, in violation of Tennessee Code Annotated 39-14-103; the said crime having been concealed by the aforesaid ALTON RAY MILLS and the aforesaid STEPHEN D. TOARMINA, from date of the commission of the offense until at least February 28, 1995, against the peace and dignity of the State of Tennessee.

/s/_____
District Attorney General
30th Judicial District

State Court Indictments - 11/19/98

A.G. FILE # AC03(18

NO. 98-13778

STATE OF TENNESSEE
Indictment for

T.C.A. 39-14-103
T.C.A. 39-14-103

THEFT OF PROPERTY
THEFT OF PROPERTY

(SCATS- 21039)
(SCATS - 21039)

VS.

ALTON RAY MILLS
and
STEPHEN D. TOARMINA

WITNESSES:
Summon for State

D. McDONALD, FBI
LEONARD T. ROVERY, 2301 DAYWOOD
WILLIAM O. SPEIGHT, 2256 LAKE HILL CT., CORDOVA, TN
GEORGE H. STAUFFER, 9281 FLETCHER TRACE PKWY.
ALLEN BEENE, 3793 AUDUBOND RIDGE, BARTLETT, TN
GEORGE M. SELBY, JR., 1301 VOLLEYBALL LANE #252, CORDOVA, TN
DARREN T. FEATHERS, 6079 FLYNT HILL, BARTLETT, TN

D. McDONALD
Prosecutor

A TRUE BILL

/s/_____
Foreman of the Grand Jury

Date Indictment Returned: 11/19/98

STATE OF TENNESSEE)
SHELBY COUNTY)
)

CRIMINAL COURT OF
SHELBY COUNTY

NOVEMBER TERM, 1998

Count 1

GRAND JURORS of the State of Tennessee, duly selected, empaneled, sworn and charged to inquire for the body of the County of Shelby, Tennessee, upon their oath, present that:

ALTON RAY MILLS
and
STEPHEN D. TOARMINA

beginning on a date unknown to the Grand Jurors aforesaid, but at least in December, 1991, and continuing thereafter to in or about January, 1995, in Shelby County, Tennessee, and before the finding of this indictment, did unlawfully and knowingly obtain property, to wit: a sum of money, over the value of One Thousand Dollars ($1,000.00), proper goods and chattels of WILLIAM O. SPEIGHT, without the effective consent of the said WILLIAM O. SPEIGHT, with intent to deprive the owner thereof, in violation of Tennessee Code Annotated 39-14-103; the said crime having been concealed by the aforesaid ALTON RAY MILLS and the aforesaid STEPHEN D. TOARMINA, from date of the commission of the offense until at least February 28, 1995, against the peace and dignity of the State of Tennessee.

/s/_____
District Attorney General
30th Judicial District

STATE OF TENNESSEE	)	CRIMINAL COURT OF
SHELBY COUNTY	)	SHELBY COUNTY
	)	

NOVEMBER TERM, 1998

Count 2

THE GRAND JURORS of the State of Tennessee, duly selected, empaneled, sworn and charged to inquire for the body of the County of Shelby, Tennessee, upon their oath, present that:

ALTON RAY MILLS
and
STEPHEN D. TOARMINA

beginning on a date unknown to the Grand Jurors aforesaid, but at least in December, 1991, and continuing thereafter to in or about January, 1995, in Shelby County, Tennessee, and before the finding of this indictment, did unlawfully and knowingly exercise control over property, to wit: a sum of money, over the value of One Thousand Dollars ($1,000.00), proper goods and chattels of WILLIAM O. SPEIGHT, without the effective consent of the said WILLIAM O. SPEIGHT, with intent to deprive the owner thereof, in violation of Tennessee Code Annotated 39-14-103; the said crime having been concealed by the aforesaid ALTON RAY MILLS and the aforesaid STEPHEN D. TOARMINA, from date of the commission of the offense until at least February 28, 1995, against the peace and dignity of the State of Tennessee.

/s/_____
District Attorney General
30th Judicial District

State Court Indictments - 11/19/98

A.G. FILE # AC0308

NO. 98-13779

STATE OF TENNESSEE
Indictment for

T.C.A. 39-14-103
T.C.A. 39-14-103

THEFT OF PROPERTY
THEFT OF PROPERTY

(SCATS-21039)
(SCATS-21039)

VS.

ALTON RAY MILLS
and
STEPHEN D. TOARMINA

WITNESSES:
Summon for State

D. McDONALD, FBI
LEONARD T. ROVERY, 2301 DAYWOOD
WILLIAM O. SPEIGHT, 2256 LAKE HILL CT., CORDOVA, TN
GEORGE H. STAUFFER, 9281 FLETCHER TRACE PKWY.
ALLEN BEENE, 3793 AUDUBOND RIDGE, BARTLETT, TN
GEORGE M. SELBY, JR., 1301 VOLLEYBALL LANE #252, CORDOVA, TN
DARREN T. FEATHERS, 6079 FLYNT HILL, BARTLETT, TN

D. McDONALD
Prosecutor

A TRUE BILL

/s/_____
Foreman of the Grand Jury

Date Indictment Returned: 11/19/98

STATE OF TENNESSEE)
SHELBY COUNTY)
)

CRIMINAL COURT OF
SHELBY COUNTY

NOVEMBER TERM, 1998

Count 1

THE GRAND JURORS of the State of Tennessee, duly selected, empaneled, sworn and charged to inquire for the body of the County of Shelby, Tennessee, upon their oath, present that:

ALTON RAY MILLS
and
STEPHEN D. TOARMINA

beginning on a date unknown to the Grand Jurors aforesaid, but at least in March, 1991, and continuing thereafter to in or about April, 1995, in Shelby County, Tennessee, and before the finding of this indictment, did unlawfully and intentionally conspire and agree with each other to commit the offense of Theft Of Property Over $10,000; and in furtherance of the said conspiracy and agreement and acting for the purpose of facilitating commission of the said offense of Theft Of Property Over $10,000, the said ALTON RAY MILLS and the said STEPHEN D. TOARMINA did unlawfully and knowingly obtain property, to wit: a sum of money, over the value often Thousand Dollars ($10,000.00), proper goods and chattels of LEONARD T. ROVERY, WILLIAM O. SPEIGHT, GEORGE H. STAUFFER, GEORGE M. SELBY, JR., ALLEN BEENE and DARREN T. FEATHERS, without the effective consent of the said LEONARD T. ROVERY, the said WILLIAM O. SPEIGHT, the said GEORGE H. STAUFFER, the said GEORGE M.

SELBY, JR., the said ALLEN BEENE and the said DARREN T. FEATHERS, with intent to deprive the owners thereof, in violation of Tennessee Code Annotated 39-12-103; the said crime having been concealed by the aforesaid ALTON RAY MILLS and the aforesaid STEPHEN D. TOARMINA, from date of the commission of the offense until at least February 28, 1995, against the peace and dignity of the State of Tennessee.

/s/_____
District Attorney General
30th Judicial District

STATE OF TENNESSEE)
SHELBY COUNTY)
)

CRIMINAL COURT OF
SHELBY COUNTY

NOVEMBER TERM, 1998

Count 2

THE GRAND JURORS of the State of Tennessee, duly selected, empaneled, sworn and charged to inquire for the body of the County of Shelby, Tennessee, upon their oath, present that:

ALTON RAY MILLS
and
STEPHEN D. TOARMINA

beginning on a date unknown to the Grand Jurors aforesaid, but at least in March, 1991, and continuing thereafter to in or about April, 1995, in Shelby County, Tennessee, and before the finding of this indictment, did unlawfully and intentionally conspire and agree with each other to commit the offense of Theft Of Property Over $10,000; and in furtherance of the said conspiracy and agreement and acting for the purpose of facilitating commission of the said offense of Theft Of Property Over $10,000, the said ALTON RAY MILLS and the said STEPHEN D. TOARMINA did unlawfully and knowingly exercise control over property, to wit: a sum of money, over the value of Ten Thousand Dollars ($10,000.00), proper goods and chattels of: LEONARD T. ROVERY, WILLIAM O. SPEIGHT, GEORGE H. STAUFFER, GEORGE M. SELBY, JR., ALLEN BEENE and DARREN T. FEATHERS, without the effective consent of the said LEONARD T. ROVERY, the said WILLIAM O. SPEIGHT, the said GEORGE H. STAUFFER, the said GEORGE M.

SELBY, JR., the said ALLEN BEENE and the said DARREN T. FEATHERS, with intent to deprive the owners thereof, in violation of Tennessee Code Annotated 39-12-103; the said crime having been concealed by the aforesaid ALTON RAY MILLS and the aforesaid STEPHEN D. TOARMINA, from date of the commission of the offense until at least February 28, 1995, against the peace and dignity of the State of Tennessee.

/s/_____
District Attorney General
30th Judicial District

State Court Indictments - 11/19/98

A.G. FILE # AC0308

NO. 13780

STATE OF TENNESSEE
Indictment for

T.C.A. 39-12-103
T.C.A. 39-12-103

CONSPIRACY TO COMMIT THEFT OF PROPERTY
CONSPIRACY TO COMMIT THEFT OF PROPERTY

(SCATS - 21005)
(SCATS - 21005)

VS.

ALTON RAY MILLS
and
STEPHEN D. TOARMINA

WITNESSES:
Summon for State

D. McDONALD, FBI
LEONARD T. ROVERY, 2301 DAYWOOD
WILLIAM O. SPEIGHT, 2256 LAKE HILL CT., CORDOVA, TN
GEORGE H. STAUFFER, 9281 FLETCHER TRACE PKWY.
ALLEN BEENE, 3793 AUDUBOND RIDGE, BARTLETT, TN
GEORGE M. SELBY, JR., 1301 VOLLEYBALL LANE #252, CORDOVA, TN

DARREN T. FEATHERS, 6079 FLYNT HILL,
BARTLETT, TN

D. McDONALD
Prosecutor

A TRUE BILL

/s/_____
Foreman of the Grand Jury

Date Indictment Returned: 11/19/98

STATE OF TENNESSEE)
SHELBY COUNTY)
)

CRIMINAL COURT OF
SHELBY COUNTY

NOVEMBER TERM, 1998

Count 1

THE GRAND JURORS of the State of Tennessee, duly selected, empaneled, sworn and charged to inquire for the body of the County of Shelby, Tennessee, upon their oath, present that:

ALTON RAY MILLS
and
STEPHEN D. TOARMINA

beginning on a date unknown to the Grand Jurors aforesaid, but at least in September, 1994, and continuing thereafter to in or about January, 1995, in Shelby County, Tennessee, and before the finding of this indictment, did unlawfully and intentionally, while public servants, to wit: deputy sheriffs of Shelby County, Tennessee, solicit and accept a pecuniary benefit, to wit: a sum of money, from DARREN L. FEATHERS upon an understanding that their judgment, exercise of discretion and other actions as public servants would thereby be influenced, in violation of Tennessee Code Annotated 39-16-102; the said crime having been concealed by the aforesaid ALTON RAY MILLS and the aforesaid STEPHEN D. TOARMINA, from date of the commission of the offense until at least February 28, 1995, against the peace and dignity of the State of Tennessee.

/s/_____
District Attorney General
30th Judicial District

State Court Indictments - 11/19/98

A.G. FILE # AC0308

NO. 98-13781

STATE OF TENNESSEE
Indictment for
T.C.A. 39-16-102

BRIBERY OF PUBLIC SERVANT
(SCATS - 21124)

VS.

ALTON RAY MILLS
and
STEPHEN D. TOARMINA

WITNESSES:
Summon for State

D. McDONALD, FBI
LEONARD T. ROVERY, 2301 DAYWOOD
WILLIAM O. SPEIGHT, 2256 LAKE HILL CT., CORDOVA, TN
GEORGE H. STAUFFER, 9281 FLETCHER TRACE PKWY.
ALLEN BEENE, 3793 AUDUBOND RIDGE, BARTLETT, TN
GEORGE M. SELBY, JR., 1301 VOLLEYBALL LANE #252, CORDOVA, TN
DARREN T. FEATHERS, 6079 FLYNT HILL, BARTLETT, TN

D. McDONALD
Prosecutor

A TRUE BILL

/s/_____
Foreman of the Grand Jury

Date Indictment Returned: 11/19/98

STATE OF TENNESSEE)
SHELBY COUNTY)
)

CRIMINAL COURT OF
SHELBY COUNTY

NOVEMBER TERM, 1998

Count 1

THE GRAND JURORS of the State of Tennessee, duly selected, empaneled, sworn and charged to inquire for the body of the County of Shelby, Tennessee, upon their oath, present that:

ALTON RAY MILLS
and
STEPHEN D. TOARMINA

beginning on a date unknown to the Grand Jurors aforesaid, but at least in March, 1994, and continuing thereafter to in or about January, 1995, in Shelby County, Tennessee, and before the finding of this indictment, did unlawfully and intentionally, while public servants, to wit: deputy sheriffs of Shelby County, Tennessee, solicit and accept a pecuniary benefit, to wit: a sum of money, from ALLEN BEENE upon an understanding that their judgment, exercise of discretion and other actions as public servants would thereby be influenced, in violation of Tennessee Code Annotated 39-16-102; the said crime having been concealed by the aforesaid ALTON RAY MILLS and the aforesaid STEPHEN D. TOARMINA, from date of the commission of the offense until at least February 28, 1995, against the peace and dignity of the State of Tennessee.

/s/_____
District Attorney General
30th Judicial District

A.G. FILE #AC0308

NO. 98-13782

STATE OF TENNESSEE
Indictment for

T.C.A. 39-16-102

BRIBERY OF PUBLIC SERVANT

(SCATS - 24124)

VS.

ALTON RAY MILLS
and
STEPHEN D. TOARMINA

WITNESSES:
Summon for State

D. McDONALD, FBI
LEONARD T. ROVERY, 2301 DAYWOOD
WILLIAM O. SPEIGHT, 2256 LAKE HILL CT., CORDOVA, TN
GEORGE H. STAUFFER, 9281 FLETCHER TRACE PKWY.
ALLEN BEENE, 3793 AUDUBOND RIDGE, BARTLETT, TN
GEORGE M. SELBY, JR., 1301 VOLLEYBALL LANE #252, CORDOVA, TN
DARREN T. FEATHERS, 6079 FLYNT HILL, BARTLETT, TN

D. McDONALD
Prosecutor

A TRUE BILL

/s/_____
Foreman of the Grand Jury

Date Indictment Returned: 11/19/98

STATE OF TENNESSEE)
SHELBY COUNTY)
)

CRIMINAL COURT OF
SHELBY COUNTY

NOVEMBER TERM, 1998

Count 1

THE GRAND JURORS of the State of Tennessee, duly selected, empaneled, sworn and charged to inquire for the body of the County of Shelby, Tennessee, upon their oath, present that:

ALTON RAY MILLS
and
STEPHEN D. TOARMINA

beginning on a date unknown to the Grand Jurors aforesaid, but at least in February, 1994, and continuing thereafter to in or about January, 1995, in Shelby County, Tennessee, and before the finding of this indictment, did unlawfully and intentionally, while public servants, to wit: deputy sheriffs of Shelby County, Tennessee, solicit and accept a pecuniary benefit, to wit: a sum of money, from GEORGE M. SELBY, JR., upon an understanding that their judgment, exercise of discretion and other actions as public servants would thereby be influenced, in violation of Tennessee Code Annotated 39-16-102; the said crime having been concealed by the aforesaid ALTON RAY MILLS and the aforesaid STEPHEN D. TOARMINA, from date of the commission of the offense until at least February 28, 1995, against the peace and dignity of the State of Tennessee.

/s/_____
District Attorney General
30th Judicial District

State Court Indictments - 11/19/98

A.G. FILE # AC0308

NO. 98-13783

STATE OF TENNESSEE
Indictment for

T.C.A. 39-16-102

BRIBERY OF PUBLIC SERVANT

(SCATS - 21124)

VS.

ALTON RAY MILLS
and
STEPHEN D. TOARMINA

WITNESSES:
Summon for State

D. McDONALD, FBI
LEONARD T. ROVERY, 2301 DAYWOOD
WILLIAM O. SPEIGHT, 2256 LAKE HILL CT., CORDOVA, TN
GEORGE II. STAUFFER, 9281 FLETCHER TRACE PKWY.
ALLEN BEENE, 3793 AUDUBOND RIDGE, BARTLETT, TN
GEORGE M. SELBY, JR., 1301 VOLLEYBALL LANE #252, CORDOVA, TN
DARREN T. FEATHERS, 6079 FLYNT HILL, BARTLETT, TN

D. McDONALD
Prosecutor

A TRUE BILL

/s/_____
Foreman of the Grand Jury

Date Indictment Returned: 11/19/98

STATE OF TENNESSEE)
SHELBY COUNTY)
)

CRIMINAL COURT OF
SHELBY COUNTY

NOVEMBER TERM, 1998

Count 1

THE GRAND JURORS of the State of Tennessee, duly selected, empaneled, sworn and charged to inquire for the body of the County of Shelby, Tennessee, upon their oath, present that:

ALTON RAY MILLS
and
STEPHEN D. TOARMINA

beginning on a date unknown to the Grand Jurors aforesaid, but at least in June, 1993, and continuing thereafter to in or about January, 1995, in Shelby County, Tennessee, and before the finding of this indictment, did unlawfully and intentionally, while public servants, to wit: deputy sheriffs of Shelby County, Tennessee, solicit and accept a pecuniary benefit, to wit: a sum of money, from GEORGE H. STAUFFER upon an understanding that their judgment, exercise of discretion and other actions as public servants would thereby be influenced, in violation of Tennessee Code Annotated 39-16-102; the said crime having been concealed by the aforesaid ALTON RAY MILLS and the aforesaid STEPHEN D. TOARMINA, from date of the commission of the offense until at least February 28, 1995, against the peace and dignity of the State of Tennessee.

/s/_____
District Attorney General
30th Judicial District

State Court Indictments - 11/19/98

A.G. FILE # AC0308

NO. 98-13784

STATE OF TENNESSEE
Indictment for

T.C.A. 39-16-102

BRIBERY OF PUBLIC SERVANT

(SCATS - 21124)

VS.

ALTON RAY MILLS
and
STEPHEN D. TOARMINA

WITNESSES:
Summon for State

D. McDONALD, FBI
LEONARD T. ROVERY, 2301 DAYWOOD
WILLIAM O. SPEIGHT, 2256 LAKE HILL CT., CORDOVA, TN
GEORGE H. STAUFFER, 9281 FLETCHER TRACE PKWY.
ALLEN BEENE, 3793 AUDUBOND RIDGE, BARTLETT, TN
GEORGE M. SELBY, JR., 1301 VOLLEYBALL LANE #252, CORDOVA, TN
DARREN T. FEATHERS, 6079 FLYNT HILL, BARTLETT, TN

D. McDONALD
Prosecutor

A TRUE BILL

/s/_____
Foreman of the Grand Jury

Date Indictment Returned: 11/19/98

STATE OF TENNESSEE)
SHELBY COUNTY)
)

CRIMINAL COURT OF
SHELBY COUNTY

NOVEMBER TERM, 1998

Count 1

THE GRAND JURORS of the State of Tennessee, duly selected, empaneled, sworn and charged to inquire for the body of the County of Shelby, Tennessee, upon their oath, present that:

ALTON RAY MILLS
and
STEPHEN D. TOARMINA

beginning on a date unknown to the Grand Jurors aforesaid, but at least in December, 1991, and continuing thereafter to in or about January, 1995, in Shelby County, Tennessee, and before the finding of this indictment, did unlawfully and intentionally, while public servants, to wit: deputy sheriffs of Shelby County, Tennessee, solicit and accept a pecuniary benefit, to wit: a sum of money, from WILLIAM O. SPEIGHT upon an understanding that their judgment, exercise of discretion and other actions as public servants would thereby be influenced, in violation of Tennessee Code Annotated 39-16-102; the said crime having been concealed by the aforesaid ALTON RAY MILLS and the aforesaid STEPHEN D. TOARMINA, from date of the commission of the offense until at least February 28, 1995, against the peace and dignity of the State of Tennessee.

/s/_____
District Attorney General
30th Judicial District

State Court Indictments - 11/19/98

A.G. FILE # AC0308

NO. 98-13785

STATE OF TENNESSEE
Indictment for

T.C.A. 39-16-102

BRIBERY OF PUBLIC SERVANT

(SCATS- 21124)

VS.

ALTON RAY MILLS
and
STEPHEN D. TOARM1NA

WITNESSES:
Summon for State

D. McDONALD, FBI
LEONARD T. ROVERY, 2301 DAYWOOD
WILLIAM O. SPEIGHT, 2256 LAKE H/LL CT., CORDOVA, TN
GEORGE H. STAUFFER, 9281 FLETCHER TRACE PKWY.
ALLEN BEENE, 3793 AUDUBOND RIDGE, BARTLETT, TN
GEORGE M. SELBY, JR., 1301 VOLLEYBALL LANE #252, CORDOVA, TN
DARREN T. FEATHERS, 6079 FLYNT HILL, BARTLETT, TN

D. McDONALD
Prosecutor

A TRUE BILL

/s/_____
Foreman of the Grand Jury

Date Indictment Returned: 11/19/98

STATE OF TENNESSEE	)	CRIMINAL COURT OF
SHELBY COUNTY	)	SHELBY COUNTY
	)	

NOVEMBER TERM, 1998

Count 1

THE GRAND JURORS of the State of Tennessee, duly selected, empaneled, sworn and charged to inquire for the body of the County of Shelby, Tennessee, upon their oath, present that:

ALTON RAY MILLS
and
STEPHEN D. TOARMINA

beginning on a date unknown to the Grand Jurors aforesaid, but at least in March, 1991, and continuing thereafter to in or about January, 1995, in Shelby County, Tennessee, and before the finding of this indictment, did unlawfully and intentionally, while public servants, to wit: deputy sheriffs of Shelby County, Tennessee, solicit and accept a pecuniary benefit, to wit: a sum of money, from LEONARD T. ROVERY upon an understanding that their judgment, exercise of discretion and other actions as public servants would thereby be influenced, in violation of Tennessee Code Annotated 39-16-102; the said crime having been concealed by the aforesaid ALTON RAY MILLS and the aforesaid STEPHEN D. TOARMINA, from date of the commission of the offense until at least February 28, 1995, against the peace and dignity of the State of Tennessee.

/s/_____
District Attorney General
30th Judicial District

State Court Indictments - 11/19/98

A.G. FILE # AC0308

NO. 98-13786

STATE OF TENNESSEE
Indictment for

T.C.A. 39-16-102

BRIBERY OF PUBLIC SERVANT

(SCATS - 21124)

VS.

ALTON RAY MILLS
and
STEPHEN D. TOARMINA

WITNESSES:
Summon for State

D. McDONALD, FBI
LEONARD T. ROVERY, 2301 DAYWOOD
WILLIAM O. SPEIGHT, 2256 LAKE HILL CT., CORDOVA, TN
GEORGE H. STAUFFER, 9281 FLETCHER TRACE PKWY.
ALLEN BEENE, 3793 AUDUBOND RIDGE, BARTLETT, TN
GEORGE M. SELBY, JR., 1301 VOLLEYBALL LANE #252, CORDOVA, TN
DARREN T. FEATHERS, 6079 FLYNT HILL, BARTLETT, TN

D. McDONALD
Prosecutor

A TRUE BILL

/s/_____
Foreman of the Grand Jury

Date Indictment Returned: 11/19/98

STATE OF TENNESSEE)
SHELBY COUNTY)
)

CRIMINAL COURT OF
SHELBY COUNTY

NOVEMBER TERM, 1998

Count 1

THE GRAND JURORS of the State of Tennessee, duly selected, empaneled, sworn and charged to inquire for the body of the County of Shelby, Tennessee, upon their oath, present that:

ALTON RAY MILLS
and
STEPHEN D. TOARMINA

beginning on a date unknown to the Grand Jurors aforesaid, but at least in February, 1991, and continuing thereafter to in or about April, 1995, in Shelby County, Tennessee, and before the finding of this indictment, did unlawfully and intentionally conspire and agree with each other to commit the offense of Bribery Of Public Servant; and in furtherance of the said conspiracy and agreement and acting for the purpose of facilitating commission of the said offense of Bribery Of Public Servant, the said ALTON RAY MILLS and the said STEPHEN D. TOARMINA, while public servants, to wit: deputy sheriffs of Shelby County, Tennessee, did unlawfully accept a pecuniary benefit, to wit: a sum of money, upon an understanding that their judgment, exercise of discretion and other actions as public servants would thereby be influenced, in violation of Tennessee Code Annotated 39-12-103; the said crime having been concealed by the aforesaid ALTON RAY MILLS and the aforesaid STEPHEN D. TOARMINA, from date of the commission of the offense until at least February

28, 1995, against the peace and dignity of the State of Tennessee.

/s/_____
District Attorney General
30th Judicial District

State Court Indictments - 11/19/98

A.G. FILE # AC0308

NO. 98-13787

STATE OF TENNESSEE
Indictment for
T.C.A. 39-12-103

CONSPIRACY TO COMMIT BRIBERY OF PUBLIC SERVANT
(SCATS - 21005)

VS.

ALTON RAY MILLS
and
STEPHEN D. TOARMINA

WITNESSES:
Summon for State

D. McDONALD, FBI
LEONARD T. ROVERY, 2301 DAYWOOD
WILLIAM O. SPEIGHT, *2256* LAKE HILL CT., CORDOVA, TN
GEORGE H. STAUFFER, 92g 1 FLETCHER TRACE PKWY.
ALLEN BEENE, 3793 AUDUBOND RIDGE, BARTLETT, TN
GEORGE M. SELBY, JR., 1301 VOLLEYBALL LANE #252, CORDOVA, TN
DARREN T. FEATHERS, 6079 FLYNT HILL, BARTLETT, TN

D. McDONALD
Prosecutor

A TRUE BILL

/s/_____
Foreman of the Grand Jury

Date Indictment Returned: 11/19/98

APPENDIX E

UNITED STATES CONSTITUTION
Article 1, Section 8

Section 8. [1] The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Deference and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

[2] To borrow money on the credit of the United States;

[3] To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

[4] To establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States;

[5] To coin Money, regulate the value thereof, and of foreign Coin, and fix the Standard of Weights and Measures;

[6] To provide the Punishment of counterfeiting the Securities and current Coin of the United States;

[7] To establish Post Offices and post Roads;

[8] To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries;

[9] To constitute Tribunals inferior to the supreme Court;

[10] To define and punish Piracies and Felonies committed on the high Seas, and Offenses against the Law of Nations;

[11] To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;

[12] To raise and support Armies but no Appropriation of Money to that Use shall be for a longer Term than two Years;

[13] To provide and maintain a Navy;

[14] To make Rules for the Government and Regulation of the land and navel Forces;

[15] To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;

[16] To provide for organizing, arming and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress;

[17] To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, be Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings; - And

[18] To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

APPENDIX F

Title: 18 U.S.C. § 1951 (Hobbs Act)

TITLE 18 - CRIMES AND CRIMINAL PROCEDURE

PART I CRIMES

CHAPTER 25 - RACKETEERING

Sec. 1951. Interference with commerce by threats or violence.

(a) Whoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion or attempts or conspires so to do, or commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section shall be fined under this title or imprisoned not more than twenty years, or both.

(b) As used in this section -

(1) The term "robbery" means the unlawful taking or obtaining of personal property from the person or in the presence of another, against his will, by means of actual or threatened force, or violence, or fear of injury, immediate or future, to his person or property, or property in his custody or possession, or the person or property of a relative or member of his

family or of anyone in his company at the time of the taking or obtaining.

(2) The term "extortion" means the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right.

(3) The term "commerce" means commerce within the District of Columbia, or any Territory or Possession of the United States; all commerce between any point in a State, Territory, Possession, or the District of Columbia and any point outside thereof; all commerce between points within the same State through any place outside such State; and all other commerce over which the United States has jurisdiction.

(c) This section shall not be construed to repeal, modify or affect section 17 of Title 15, sections 52, 101-115, 151-166 of Title 29 or sections 151-188 of Title 45.

Supreme Court, U.S.
FILED
NOV 3 2000
OFFICE OF THE CLERK

(2)

No. 00-184

In the Supreme Court of the United States

ALTON RAY MILLS AND STEPHEN D. TOARMINA,
PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether the evidence was sufficient to support petitioners' convictions for extortion that "in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce," in violation of 18 U.S.C. 1951.

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In the Supreme Court of the United States

No. 00-184

ALTON RAY MILLS AND STEPHEN D. TOARMINA, PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-10a) is reported at 204 F.3d 669. A previous opinion of the court of appeals affirming the dismissal of certain counts of the indictment is reported at 140 F.3d 630.

JURISDICTION

The judgment of the court of appeals was entered on February 28, 2000. A petition for rehearing was denied on May 4, 2000 (Pet. App. 22a-23a). The petition for a writ of certiorari was filed on August 2, 2000. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a jury trial in the United States District Court for the Western District of Tennessee, petitioners were convicted on one count of conspiracy, in violation of 18 U.S.C. 371 (Count 1); six counts of affecting commerce by extortion, in violation of the Hobbs Act, 18 U.S.C. 1951 (Counts 3, 5, 7, 9, 11, and 13); and four counts of money laundering, in violation of 18 U.S.C. 1956(a) (Counts 15-18). Petitioner Mills was also convicted on an additional extortion count (Count 14).[1] After the jury's verdict, the district court granted a judgment of acquittal. Pet. App. 11a-21a. The government appealed, and the court of appeals reversed. *Id.* at 1a-10a.[2]

1. Petitioner Alton Ray Mills was Chief Deputy Sheriff, and petitioner Stephen D. Toarmina was Staff Special Deputy, of the Shelby County Sheriff's Department in Memphis, Tennessee. Pet. App. 2a. Petitioners solicited and obtained payments of approximately $3500 from each of six people who sought employment as full-time deputy sheriffs with the Department. *Ibid.* Petitioner Toarmina encouraged the applicants, none of whom had the resources to pay the sums demanded, to

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[1] The indictment also included six counts of bribery, in violation of 18 U.S.C. 666, but the district court dismissed those counts before trial on the ground that the transactions at issue did not meet the $5000 statutory threshold. The government appealed, and the court of appeals affirmed the district court's dismissal of those counts. 140 F.3d 630 (1998).

[2] Petitioner Mills was sentenced only on Count 14, the one extortion count on which the district court denied a judgment of acquittal. The district court imposed a sentence of 37 months' imprisonment, to be followed by two years' supervised release. 11/19/98 Judgment 2-3. Petitioner Mills was also fined $7500. *Id.* at 5.

borrow the money from a Memphis loan company, First Metropolitan Financial Services, Inc., with which Toarmina had an ongoing relationship. *Id.* at 2a-3a. First Metropolitan's business involved loans made both to residents of Tennessee and to residents of other States. *Id.* at 3a; Gov't C.A. Br. 8.

Five of the six men accepted Toarmina's suggestion to apply for loans from First Metropolitan, and they listed Toarmina as a "source" or "reference" on their loan forms. Pet. App. 3a. First Metropolitan approved all of the loans, and Toarmina personally co-signed at least one of the notes. *Ibid.* The borrowers' loan payments included premiums for credit life insurance and disability insurance coverage provided by an insurance company located in Florida. Gov't C.A. Br. 8-9. The sixth applicant chose instead to raise the money for his extortionate payment with advances on his credit cards. Pet. App. 3a. All of the funds were paid to Toarmina, who deposited the money in the account of his grocery business. *Ibid.* Petitioners later used assets of that business for their personal financial obligations. *Ibid.*; Gov't C.A. Br. 10-11.

2. Petitioners were charged with violations of, *inter alia*, the Hobbs Act, which establishes criminal penalties for any person who "in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion or attempts or conspires so to do." 18 U.S.C. 1951(a). Petitioners moved for judgments of acquittal. Pet. App. 4a. The district court permitted the case to go to the jury but informed the parties that it intended to grant the motions if the jury returned guilty verdicts. *Ibid.* The jury found petitioners guilty on all counts. *Ibid.*

After the jury returned its verdict, the district court granted petitioners' motions for judgments of acquittal with respect to all but Count 14, the extortion count against petitioner Mills alone. Pet. App. 11a-21a. The court found that there was insufficient evidence of an effect on interstate commerce as a result of the extortion. *Id.* at 12a-17a. The court noted that the victims had used personal assets to pay the money demanded by petitioners, and that there was no proof that any victim was engaged in interstate commerce. *Id.* at 14a. The court rejected the government's contention that the Hobbs Act's interstate commerce element was satisfied by proof that petitioners had directed the applicants to First Metropolitan. *Ibid.*

The district court principally relied on *United States* v. *Mattson*, 671 F.2d 1020 (7th Cir. 1982), and *United States* v. *Buffey*, 899 F.2d 1402 (4th Cir. 1990), which the court described as holding "that the mere depletion of the personal assets of an individual does not create a reasonable probability of a de minimis effect on interstate commerce." Pet. App. 15a. The district court further held that other links to interstate commerce, including the deposits of the extorted sums into Toarmina's grocery business and the interstate purchases and travel of the sheriff's office, were too tenuously related to the extortionate conduct to constitute a sufficient commerce nexus. *Id.* at 15a-16a.

The federal money laundering statute prohibits specified financial transactions involving the proceeds of unlawful activity. See 18 U.S.C. 1956. Because petitioners' money laundering convictions were premised on the view that their extortionate conduct constituted the requisite "unlawful activity," the district court also granted the motions for judgments of acquittal on the money laundering counts. Pet. App. 18a. For similar

reasons, the court set aside petitioners' convictions on the conspiracy count. *Id.* at 19a-20a. The court left standing petitioner Mills's Hobbs Act conviction on Count 14. *Id.* at 20a-21a. The court explained that the victim of the extortionate act charged in that count had paid by means of a check drawn on the account of his auto recovery business, a company involved in interstate commerce. *Ibid.*

3. The government appealed from the judgments of acquittal, and the court of appeals reversed. Pet. App. 1a-10a. The court of appeals noted that the broad language of the Hobbs Act has been held to evince "a purpose to use all the constitutional power Congress has to punish interference with interstate commerce by extortion, robbery or physical violence." *Id.* at 5a (quoting *Stirone* v. *United States*, 361 U.S. 212, 215 (1960)). The court further explained that the Hobbs Act has long been understood as requiring only a de minimis effect on commerce. *Id.* at 5a-6a. "Both in our circuit and others," the court stated, "this understanding has survived the opinion in" *United States* v. *Lopez*, 514 U.S. 549 (1995). Pet. App. 5a.

The court of appeals held that the record in this case established the requisite connection to interstate commerce. Pet. App. 6a-10a. It was sufficient, the court of appeals explained, that the evidence showed "a realistic probability that the bribe money would be borrowed from a company engaged in interstate commerce," especially in light of the "substantial evidence that [petitioner] Toarmina or one of his co-conspirators had actual knowledge of the interstate character of the funds before the money was turned over." *Id.* at 9a. The court of appeals distinguished the two cases on which the district court had relied. It explained that the courts of appeals in those cases had not considered

whether the sort of proof offered in this case—*i.e.*, evidence that an extortion victim had paid the perpetrator by securing a loan from a company doing business in interstate commerce—would establish the commerce nexus required by the Hobbs Act. *Id.* at 6a-10a.

Finally, the court of appeals held that the evidence supported petitioners' convictions even though "the [victims'] borrowing of the money from interstate lenders could not have been expected to 'interfere' with interstate commerce." Pet. App. 10a. The court explained that "the effect on commerce" required by the Hobbs Act "need not be adverse; even a beneficial effect can satisfy the statute." *Ibid.* The court of appeals observed that "[i]n exercising its constitutional power to regulate commerce among the several states, Congress often prohibits conduct that would have a stimulative effect on commerce as opposed to a depressive effect." *Ibid.*

ARGUMENT

1. Petitioners contend (Pet. 14-15) that their extortionate scheme did not have an effect on commerce within the scope of the Hobbs Act. The Hobbs Act makes it a federal crime to commit a robbery or extortion (or attempt or conspire to do so) that "in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce." 18 U.S.C. 1951(a). That broad jurisdictional language demonstrates "a purpose to use all the constitutional power Congress has to punish interference with interstate commerce by extortion, robbery or physical violence." *Stirone* v. *United States*, 361 U.S. 212, 215 (1960). As the court of appeals in this case correctly observed, the Hobbs Act has been uniformly

construed, both before and after this Court's decision in *United States* v. *Lopez*, 514 U.S. 549 (1995), as prohibiting all acts of robbery or extortion that in any way affect interstate commerce. See Pet. App. 5a-6a. As the Second Circuit explained:

> Our cases have long recognized that the jurisdictional requirement of the Hobbs Act may be satisfied by a showing of a very slight effect on interstate commerce. * * * We now expressly hold that *Lopez* did not raise the jurisdictional hurdle for bringing a Hobbs Act prosecution. * * * [O]ur sister Circuits that have addressed this question have all so held.

United States v. *Farrish*, 122 F.3d 146, 148 (1997) (brackets and internal quotation marks omitted), cert. denied, 522 U.S. 1118 (1998).

In keeping with that principle, the courts of appeals have consistently upheld Hobbs Act convictions even where, as here, the victim of the extortion was an individual rather than a business, so long as the evidence demonstrated an effect on interstate commerce. See *United States* v. *Kaplan*, 171 F.3d 1351, 1353-1356 (11th Cir.) (en banc), cert. denied, 120 S. Ct. 323 (1999); *United States* v. *Thomas*, 159 F.3d 296, 297-298 (7th Cir. 1998), cert. denied, 527 U.S. 1023 (1999); *United States* v. *Stephens*, 964 F.2d 424, 428-429 (5th Cir. 1992); *United States* v. *Biondo*, 483 F.2d 635, 639-640 (8th Cir. 1973), cert. denied, 415 U.S. 947 (1974); see also *United States* v. *Huynh*, 60 F.3d 1386, 1388-1389 (9th Cir. 1995); *United States* v. *Bengali*, 11 F.3d 1207, 1212 (4th Cir. 1993), cert. denied, 511 U.S. 1092 (1994); *United States* v. *Hollis*, 725 F.2d 377, 380 (6th Cir.), cert. denied, 469 U.S. 820 (1984). The decision below, affirming petitioners' Hobbs Act convictions for extortion of

individuals who obtained the funds from an interstate lender, is in accord with those decisions. As the court of appeals correctly held, the government in this case established the requisite effect on commerce through proof that petitioners' extortionate scheme required for its completion that the victims borrow the money from an interstate lending institution and that petitioners knew of "the interstate character of the funds before the money was turned over." Pet. App. 9a.[3]

2. Based on this Court's decision in *Lopez*, petitioners contend (Pet. 9-13) that a conviction under the Hobbs Act requires proof that a particular act of extortion has a "substantial" effect on interstate commerce. They assert that the courts of appeals are in conflict over the degree of impact on commerce that the

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[3] The court of appeals also correctly distinguished the cases on which the district court relied. Neither *United States* v. *Mattson*, 671 F.2d 1020 (7th Cir. 1982), nor *United States* v. *Buffey*, 899 F.2d 1402 (4th Cir. 1990), endorses a per se rule that extortion or robbery of an individual (as opposed to a commercial enterprise) falls outside the Hobbs Act's coverage. As the court below explained, those decisions rest on fact-specific determinations that the government in those cases had failed to establish any nexus between the extorted or stolen funds and any form of interstate commerce. Pet. App. 6a-10a. In neither of those cases did the court consider the question whether the Hobbs Act's interstate commerce requirement would be satisfied by proof that an extortion victim obtained the relevant funds from a commercial lender doing business in more than one State. See *ibid.* Here, by contrast, there was a "realistic probability" that the extorted funds would be borrowed from a company engaged in interstate commerce; indeed, the co-conspirators even directed the victims to a particular lending institution. *Id.* at 3a, 9a. In addition, petitioners deposited the proceeds of the extortionate scheme into the account of a commercial enterprise (the Toarmina Grocery and Market). See *id.* at 3a.

Act requires. That argument is flawed in at least two respects.

The Court in *Lopez* reaffirmed that "Congress is empowered to regulate and protect the instrumentalities of interstate commerce, or persons or things in interstate commerce, even though the threat may come only from intrastate activities." 514 U.S. at 558. The government's evidence established that the victims in this case were encouraged to obtain loans from a business engaged in interstate commerce, that five of the six identified victims in fact obtained funds from that interstate company, and that the bribes were deposited into the account of a commercial business owned by petitioner Toarmina. Because the Hobbs Act as applied in this case served to regulate and protect "persons or things in interstate commerce," *ibid.*, no "substantiality" requirement applies. Cf. *United States* v. *Robertson*, 514 U.S. 669, 671-672 (1995) (per curiam) (upholding racketeering conviction based on evidence that enterprise gold mine was "engaged in" interstate commerce, and finding it unnecessary to consider whether activities of the gold mine "affected commerce," on the ground that "[t]he 'affecting commerce' test was developed * * * to define the extent of Congress' power over purely *intra*state commercial activities that nonetheless have substantial *inter*state effects.").

Even in cases where a "substantiality" requirement does govern the Commerce Clause analysis, the inquiry is not limited to the effects on commerce of a particular individual's conduct. Rather, the aggregate effects of the regulated activity may be considered in determining whether the statute falls within the reach of the commerce power. As the Court in *Lopez* reaffirmed, "where a general regulatory statute bears a substantial

relation to commerce, the *de minimis* character of individual instances arising under that statute is of no consequence." 514 U.S. at 558 (emphasis omitted) (quoting *Maryland* v. *Wirtz*, 392 U.S. 183, 197 n.27 (1968)). The Hobbs Act's application to the extortions here is valid under that principle. Extortion involves a classic hallmark of economic activity—money changing hands outside a single household—and, in the aggregate, extortions that affect interstate commerce unquestionably have a "substantial" effect on interstate commerce. The convictions in this case may therefore be sustained under the third as well as under the second category of permissible Commerce Clause legislation described in *Lopez*. See *id.* at 558-560.

Petitioners' claim of a circuit conflict is incorrect. As noted above, the courts of appeals have agreed, both before and after *Lopez*, that the jurisdictional requirement of the Hobbs Act is satisfied with a showing of a very slight effect on commerce. See *United States* v. *Castleberry*, 116 F.3d 1384, 1387 (11th Cir.), cert. denied, 522 U.S. 934 (1997); *United States* v. *Harrington*, 108 F.3d 1460, 1467 (D.C. Cir. 1997); *United States* v. *Atcheson*, 94 F.3d 1237, 1241-1243 (9th Cir. 1996), cert. denied, 519 U.S. 1156 (1997); *United States* v. *Bolton*, 68 F.3d 396, 398-399 (10th Cir. 1995), cert. denied, 516 U.S. 1137 (1996); *United States* v. *Stillo*, 57 F.3d 553, 558 n.2 (7th Cir.), cert. denied, 516 U.S. 945 (1995). The cases on which petitioners rely (Pet. 9) are not to the contrary. In *United States* v. *Jennings*, 195 F.3d 795, 800 (1999), cert. denied, 120 S. Ct. 2694 (2000), the Fifth Circuit reaffirmed its prior holdings that the Hobbs Act may properly be applied to conduct having a *de minimis* effect on interstate commerce, so long as the defendant's "actions are of a type that, repeated many times over, would have a 'substantial effect' on

interstate commerce." In *United States* v. *Quigley*, 53 F.3d 909 (8th Cir. 1995), the court also did not hold that an individual Hobbs Act violation must be shown to have had a substantial effect on commerce. In that case the defendants robbed two individuals of "eighty cents and a near-empty pouch of chewing tobacco." *Id.* at 910. The court held that the robbery "had no effect or realistic potential effect on interstate commerce." *Id.* at 911. Although the court suggested that the Hobbs Act applies to crimes against individuals only in limited circumstances, see *id.* at 910-911, it did not announce a per se rule against such applications, nor did it consider particular links to commerce similar to those that are at issue in this case.[4]

3. Petitioners also contend (Pet. 6-9) that the Hobbs Act requires an "adverse" effect on commerce. The court of appeals correctly held that the Act contains no such requirement, and that holding does not warrant this Court's review, particularly since an adverse effect was shown on the facts of this case.

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[4] This Court recently denied petitions for certiorari in several cases in which the petitioners relied on *Lopez* in challenging the application of the Hobbs Act to robberies of commercial establishments, where the effect on interstate commerce in the individual case was said to be *de minimis*. See *Gasaway* v. *United States*, 120 S. Ct. 2194 (2000) (No. 99-464); *Chopane* v. *United States*, 120 S. Ct. 2195 (2000) (No. 99-5614); *Limbrick* v. *United States*, 120 S. Ct. 2195 (2000) (No. 99-6259); *McCray* v. *United States*, 120 S. Ct. 2195 (2000) (No. 99-6302); *Hickman* v. *United States*, 120 S. Ct. 2195 (2000) (No. 99-6378); *Smith* v. *United States*, 120 S. Ct. 2201 (2000) (No. 99-6323); *Nutall* v. *United States*, 120 S. Ct. 2201 (2000) (No. 99-6328); *Nutall* v. *United States*, 120 S. Ct. 2201 (2000) (No. 99-6329); *McClinton* v. *United States*, 120 S. Ct. 2201 (2000) (No. 99-6461); *Liddell* v. *United States*, 120 S. Ct. 2202 (2000) (No. 99-6762); *Gaines* v. *United States*, 120 S. Ct. 2202 (2000) (No. 99-6973); *Woodruff* v. *United States*, 120 S. Ct. 2202 (2000) (No. 99-8034).

The Hobbs Act criminalizes extortion that "in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce." 18 U.S.C. 1951(a). Because the verb "affects" is modified only by the expansive phrase "in any way or degree," the text of the Act provides no support for petitioners' contention that the requisite impact on commerce must be "adverse." Although the verbs "obstructs" and "delays" imply a detrimental impact on commerce, the verb "affects" is not so limited.

Every court of appeals that has squarely considered the question has held that the Hobbs Act does not require an adverse effect on commerce. See *Kaplan*, 171 F.3d at 1356-1357; *United States* v. *Bailey*, 990 F.2d 119, 125 (4th Cir. 1993) ("A requirement that the effect on interstate commerce must be adverse is without support and is contrary to many cases that have found the jurisdictional requirement satisfied upon a threatened effect."); *United States* v. *Tormos-Vega*, 959 F.2d 1103, 1113 (1st Cir.) ("The commerce element may be satisfied * * * where the extortion has a beneficial effect on interstate commerce.") (internal quotation marks omitted), cert. denied, 506 U.S. 866 (1992); *Mattson*, 671 F.2d at 1024 ("Even a beneficial effect on interstate commerce * * * is within the prohibition of the statute.").

The cases on which petitioners rely (Pet. 6) do not conflict with the decisions cited above. Those cases contain dicta suggesting that the Hobbs Act contemplates a harmful effect on commerce. See *Jund* v. *Town of Hempstead*, 941 F.2d 1271, 1285 (2d Cir. 1991) (Hobbs Act prohibits "interference" with interstate commerce); *United States* v. *Collins*, 40 F.3d 95, 98 (5th Cir. 1994) (Hobbs Act requires proof that the robbery "obstructed interstate commerce"), cert. denied, 514 U.S. 1121

(1995); *United States* v. *Harmon*, 194 F.3d 890, 892-893 (8th Cir. 1999) (Act requires proof that an "extortionate transaction delayed, interrupted, or adversely affected interstate commerce"). None of those cases, however, directly presented the question whether a beneficial effect on commerce would satisfy the statute, and in none of those cases was the court's reference to adverse impacts central to its decision.[5] See *Kaplan*, 171 F.3d at 1357; cf. *Bailey*, 990 F.2d at 126 ("Although the word 'adverse' has been loosely used in expressing the effect on interstate commerce, such adverse effect is not an essential element of the crime that must be proved by

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[5] In *Jund*, the court began its analysis of the Hobbs Act by observing that the Act "has been interpreted to prohibit the illegal interference or attempted interference with interstate commerce in any way or degree, even if the effect is only minimal." 941 F.2d at 1285. The court concluded that the requisite impact on commerce had been proved, and it did not discuss the question whether a beneficial effect on commerce would suffice under the statute. *Ibid.* In *Collins*, the court held that the defendant's theft of the victim's personal vehicle, which prevented the victim from attending a business meeting and using his cellular phone to make business calls, had too attenuated an effect on interstate commerce to satisfy the statute. 40 F.3d at 99-101. Although the court referred to the allegation that the crime "obstructed interstate commerce" as "an essential element" of the Hobbs Act charge, the government did not purport to identify any beneficial effect on commerce resulting from the theft, and the court did not discuss the question whether such an effect could provide a basis for liability under the Act. *Ibid.* In *Harmon*, the court stated that "[t]o establish an offense under the Hobbs Act, the government must prove beyond a reasonable doubt that * * * the extortionate transaction delayed, interrupted, or adversely affected interstate commerce." 194 F.3d at 892-893. The defendants in that case did not contend, however, that the requisite link to commerce was lacking, and the court did not discuss the question whether a beneficial effect on commerce would suffice. See *id.* at 893-896.

the prosecution in a Hobbs Act case."). There is consequently no circuit conflict on this issue.[6]

In any event, as the government argued below, the record in this case would support a finding that the extortion caused an adverse impact on commerce. The evidence at trial showed that petitioners directed the victims of the extortionate scheme to apply for loans from First Metropolitan, a company engaged in interstate lending. As a result of those loans, First Metropolitan had fewer resources available for making loans to other applicants, including customers from other States. See Gov't C.A. Br. 21; Gov't Response to Petition for Rehearing En Banc 8-9.

4. Petitioners contend (Pet. 15-24) that the decision below conflicts with this Court's decisions in *Lopez*, *supra*; *United States* v. *Morrison*, 120 S. Ct. 1740 (2000); and *Jones* v. *United States*, 120 S. Ct. 1904 (2000). That claim is without merit.

a. The Court in *Lopez* held that Congress had exceeded its Commerce Clause authority by enacting a statute (18 U.S.C. 922(q)) that criminalized gun possession in the vicinity of schools without requiring proof that each instance of gun possession bore some connection to interstate commerce. The Court emphasized that Section 922(q) "by its terms ha[d] nothing to do with 'commerce'" and "contain[ed] no jurisdictional element which would ensure, through case-by-case inquiry, that the [criminal act] in question affect[ed] interstate commerce." 514 U.S. at 561. The Hobbs Act, by contrast, is directed at a form of economic activity—

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[6] We also note that the Court recently denied another petition for certiorari presenting this precise issue. *Kaplan* v. *United States*, 120 S. Ct. 323 (1999) (No. 99-75). There is no reason for a different result here.

extortion—and it contains an express jurisdictional element.

b. This Court's decision in *Morrison* also does not undermine the constitutionality of the Hobbs Act's application in this case. The Court in *Morrison* held that the private civil cause of action for gender-motivated violence created by the Violence Against Women Act, 42 U.S.C. 13981, could not be sustained under the Commerce Clause, reasoning that Congress lacks power to "regulate noneconomic, violent criminal conduct based solely on that conduct's aggregate effect on interstate commerce." 120 S. Ct. at 1754. *Morrison*'s reasoning is inapplicable here for at least three reasons.

First, unlike Section 13981, the Hobbs Act contains a jurisdictional element that requires a showing of an effect on interstate commerce in each case. Compare *Morrison*, 120 S. Ct. at 1751-1752 ("§ 13981 contains no jurisdictional element establishing that the federal cause of action is in pursuance of Congress' power to regulate interstate commerce," even though "*Lopez* makes clear that such a jurisdictional element would lend support to the argument that § 13981 is sufficiently tied to interstate commerce"), with *Jennings*, 195 F.3d at 800 (consistent with the jurisdictional element of Section 1951(a) ("Whoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce"), the government must show "a slight effect [on interstate commerce] in each case"). Second, while Section 13981 addressed noneconomic violent conduct, the robbery or extortion prohibited by Section 1951(a) covers economic activity, which Congress may reach even if the transaction is illegal. See *Morrison*, 120 S. Ct. at 1750 (citing *Lopez*, 514 U.S. at 559-560, which found the loansharking statute upheld in *Perez* v. *United States*, 402

U.S. 146 (1971), to be an example of regulation of "economic activity"). Third, the criminal activity in this case directly affected two different commercial enterprises, since five of the six victims obtained the relevant funds from a lender doing business in interstate commerce, and the proceeds of the crime were deposited into the account of the grocery owned by petitioner Toarmina.

c. Finally, the Court's decision in *Jones*, *supra*, is not apposite here. The Court in *Jones* held that the federal arson statute, 18 U.S.C. 844(i) (1994 & Supp. IV 1998), does not apply to the destruction of an owner-occupied residence that was not used for any commercial purpose. In construing Section 844(i), the Court in *Jones* emphasized aspects of that statute's language—in particular, the requirement that the victimized property be "used" in an "activity" affecting interstate commerce, see 120 S. Ct. at 1910-1911—that have no counterpart in the language of the Hobbs Act. This Court has already construed the Hobbs Act to reach to the limits of the commerce power. See *Stirone*, 361 U.S. at 215. Moreover, here (unlike in *Jones*), an effect on interstate businesses was not simply a fortuitous result of petitioners' conduct; it was an integral feature of their extortionate scheme.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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